

# Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania



Citizenship and Forced Migration in the Great Lakes Region  
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## **Background to the Paper**

This paper is the result of a co-ordinated effort between staff from the Centre for the Study of Forced Migration (CSFM) at the University of Dar es Salaam, the International Refugee Rights Initiative (IRRI), and the Social Science Research Council (SSRC).

The field research was carried out by Opportuna Kweka and Erasmina Massawe of CSFM, and the paper was drafted by Lucy Hovil of IRRI and Opportuna Kweka of CSFM. Olivia Bueno and Deirdre Clancy of IRRI, Khoti Kamanga of CSFM, and Josh DeWind of SSRC reviewed and edited the material. The field research team would like to express its gratitude to all those who participated in the study, in particular refugees, government of Tanzania officials, staff of UNHCR and its implementing agencies, CARITAS in Tabora and Ulyankulu, and the Peace and Justice Commission in Kigoma.

## **Citizenship and Displacement in the Great Lakes Region Working Paper Series**

The paper is the first of a series of working papers that form part of a collaborative project between the International Refugee Rights Initiative, the Social Science Research Council, and civil society and academic partners in the Great Lakes region. The project seeks to gain a deeper understanding of the linkages between conflicts over citizenship and belonging in the Great Lakes region, and forced displacement. It employs social science research under a human rights framework in order to illuminate how identity affects the experience of the displaced before, during, and after their displacement. The findings are intended to facilitate the development of regional policies that promote social and political re-integration of forced migrants by reconciling differences between socio-cultural identities and national citizenship rights that perpetuate conflict and social exclusion.

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Cover photo: Banner above the UNHCR field unit offices, Ulyankulu settlement. (O. Kweka)

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## **SUMMARY AND RECOMMENDATIONS**

### **“Citizenship is an end to being called a refugee”<sup>1</sup>**

#### ***Summary***

This paper focuses on issues of belonging and exclusion for refugees who fled Burundi in the early 1970s and sought refuge in Tanzania. More than three decades later, and with a peace agreement ending active hostilities in Burundi, “durable solutions” are finally being sought for this group of refugees.<sup>2</sup> Following a decision by the government of Tanzania to offer citizenship, they are currently being offered a choice between repatriating to Burundi or applying for naturalisation and becoming Tanzanian citizens. Based on field research conducted in Ulyankulu refugee settlement and Kigoma region (sites that represent two distinct populations of Burundian refugees with different legal and national identifications: settled and self-settled refugees), this paper explores the factors that are influencing decision-making processes amongst refugees and the multi-faceted ways they perceive their identities.

Positively, the findings indicate that the current process is seen by refugees as an opportunity: for those interviewed, the label “refugee”, which has stuck through almost four decades of exile, represents marginalisation from mainstream Tanzanian society and exclusion from full citizenship rights, particularly through restrictions on freedom of movement and the absence of the right to vote. The current push for solutions, therefore, is viewed favourably as representing a chance to shed the “refugee” label. While it should not be assumed that the refugee condition was characterised entirely by marginalisation, nor that naturalisation will automatically trigger complete integration, it is clear that (re)securing citizenship is a crucial first step towards genuine integration and the potential to access the full range of citizenship rights.

Within this context, ongoing access to livelihoods was, not surprisingly, central in influencing people’s decision-making. For those opting to repatriate, access to land in Burundi was cited as fundamental: many of those who are returning believe that they will be able to reclaim family land upon return. By the same token, socio-economic factors were important to those naturalising: access to land, livelihoods and education, were seen as major reasons for staying in Tanzania.

However, the findings also demonstrate that refugees remain ambivalent about the longer-term implications of the choices on offer, with serious concerns expressed about both options. In the case of repatriation, refugees were anxious that the current initiative is moving ahead too fast. Instability continues in Burundi, and many refugees spoke of the need for more objective and accessible information on conditions in Burundi before deciding whether to return.

For those opting for naturalisation, there were strong reservations about the process itself. Refugees lack information and independent advice, and there were reports that some were turned down in arbitrary ways or in processes that appear compromised. There was also considerable concern about what might happen to anyone not accepted for naturalisation. Although such individuals should, according to the law, be able to retain their refugee status, the research revealed that in practice these individuals were placed under tremendous pressure to return to Burundi. Furthermore, refugees questioned whether achieving the legal

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<sup>1</sup> Interview with refugee man, Ulyankulu settlement, 18 June 2008.

<sup>2</sup> UNHCR recognises three mechanisms for achieving so-called “durable solutions”, namely voluntary repatriation, resettlement and local integration.

status of citizen in Tanzania would equate to, or indeed facilitate, social integration and acceptance. Practically, those who opted for naturalisation are uncertain about their ability to access land and other resources, and expressed anger at the fact that when they opted for naturalisation they were unaware that they might be forced to relocate: in February 2008, four months after refugees had indicated their preference for either naturalisation or repatriation, they were informed that the government of Tanzania intends to close the settlements and relocate them elsewhere in Tanzania. The group had anticipated that naturalisation would reinforce claims to currently occupied land, not undermine it. Consequently many who originally opted for naturalisation have changed their minds and now intend to repatriate to Burundi, despite the fact that they also expressed serious misgivings about the security situation there.

This indecisiveness is indicative of a process in which refugees are being forced to make tough choices with limited information. Dual citizenship is not permitted in Tanzania and refugees are therefore being forced to opt for a single national identity in a context in which geopolitical uncertainty threatens to undermine the viability of their choice. While the current initiative is positive in officially ending their status as refugees, questions remain regarding the implications of their new identity, either as returnees or as Tanzanian citizens.

## ***Recommendations***

While the urgency of the current enactment of durable solutions is positive in so far as it lessens the amount of time refugees will have to wait for decisions, it is imperative that refugees be given adequate time within the process in order to make informed decisions regarding their choices. There needs to be greater clarity about the end stages of the process as well as greater levels of engagement by independent actors throughout. Crucially, an initial assessment of each refugee's individual citizenship status should be conducted to identify whether or not there is a need for them to be subject to the current process at all. In this regard, clear information must be provided about options to assert citizenship, or seek naturalisation in both Tanzania and Burundi, outside the remit of the current scheme. In terms of the process itself, the research suggests that the following recommendations would improve the current procedure:

- **Adequate information must be provided.** The findings show that refugees are being expected to make decisions with inadequate information regarding the situation in Burundi and the realities of remaining in Tanzania. Therefore they must be provided with full and accurate information regarding the realities of both options and the broader Tanzanian legal framework within which the process is operating. For example, independent information on the security, legal and human rights situation in Burundi must be available.
- **The process must not seek to promote either choice.** Interviews and field observations indicate that the current process is weighted in favour of repatriation. UNHCR and the government of Tanzania should refrain from any statements or actions that might place undue pressure on refugees to return to Burundi. The objective of the exercise should be to allow refugees to make independent, informed decisions.
- **The process must be independently monitored.** Lack of impartial observers and advisers for refugees is jeopardising the current process, particularly in situations where refugees do not meet the requirements to participate in the process. Independent observers should be invited to participate in the process and refugees should have access to neutral advisers. The involvement of

credible third parties would increase confidence that the process is not being manipulated and allow for the provision of impartial advice and information.

- **Refugees must be allowed to change their minds.** During the research, many refugees indicated that they wish to change their minds with respect to their initial decision given the current uncertainty of the situation in Burundi. Therefore it is important that refugees who originally opted for repatriation are allowed to apply for naturalisation, within a limited time period.
- **The possibility for continued protection as refugees must be clarified.** In the absence of any declaration of cessation for this group, the right of refugees to request continued refugee protection, subject to continuing need, must be acknowledged.
- **Adequate interpretation services are needed.** Poor interpretation is hampering due process for refugees who do not speak fluent Kiswahili and inadequate provision of interpretation has led to discrepancies in outcome. Trained interpreters need to be made available at every stage of the process.
- **Eligibility requirements for naturalisation must be clarified.** Refugees are unsure as to the requirements for naturalisation under the special scheme. Greater clarification is needed regarding barriers to eligibility for naturalisation under this scheme, and with regard to the legal opportunities for naturalisation in Tanzania that exist more broadly outside the scheme's remit.
- **Clarity and due process are needed in relation to the proposed relocation exercise.** The proposed relocation of all refugees who have not been repatriated is causing considerable concern and uncertainty. While international law recognises that there may be legitimate need for governments to relocate nationals in some instances, clarity over this issue is urgent: current uncertainty has led to some refugees not preparing their farms, which could lead to food shortages in the coming year. The government should consider allowing the current settlements to remain inhabited, maintain the infrastructure, and allow any relocation to occur slowly and voluntarily.
- **Property rights must be respected.** The property rights of repatriating and naturalising refugees must be respected to the full extent of the law and clear information regarding such rights should be provided. Such an approach would ultimately contribute to ensuring more successful integration in both Tanzania and Burundi.
- **The prospects for self-settled refugees must be clarified.** Self-settled refugees are living with considerable uncertainty regarding their future status. Given that they are no less "refugees" than those living in the settlements, they should be offered the same choices as those in the settlements. The government must clarify whether, and when, a similar process will be applied to self-settled refugees.

## BACKGROUND

After 36 years of displacement – as foreigners in their country of exile yet unable to return home – Burundian refugees who fled to Tanzania in 1972 are currently being given a choice between returning to Burundi and reasserting their Burundian citizenship, or renouncing that link and applying for naturalisation as a route to Tanzanian citizenship. The process is at once a legal and symbolic end to being a refugee through the enactment of durable solutions, and a profound moment of change for refugees.

From a refugee policy perspective, the choice that this population is now being offered is clearly progressive. The status of refugee is intended to be a temporary path to effective protection, and therefore finding solutions that allow the refugee to reassert sustainable national belonging – whether through repatriation (reassertion of the protection of the country of origin), integration (accessing national protection in the host country) or resettlement (whereby protection is offered by a third country) – is a priority. The fact that this group of refugees are being offered a genuine choice between two durable solutions, and that some have had the option of resettlement, is unusual.<sup>3</sup> As such, it is not surprising that the United Nations High Commissioner for Refugees (UNHCR) has touted this process as a model programme. Too often refugees after long periods of exile find themselves with neither the option to return home nor to naturalise, and the organisation understandably lauds the opportunity for refugees to choose between two options that hold out the potential for ensuring more sustainable access to rights.

From the perspective of the refugees who are experiencing the process, however, the linkage between a “durable solution” and an experience of true integration in a community and state where their rights are fully respected is less clear. By speaking with Burundian refugees at a moment when their national and international identity is being redefined, the paper illuminates both what this process means for these refugees, and how the linkages between access to rights, citizenship and broader notions of belonging interact with each other. In so doing, it explores the extent to which the process will genuinely represent durability: to what extent will returnees be able to re-assert effective citizenship and exercise their rights fully in the still tense and somewhat unstable Burundi? And to what extent will the recognition of formal citizenship affect the experience of those who stay on in Tanzania? Furthermore, what other factors impinge upon levels of inclusion or exclusion, and are these adequately reflected in the current process?

### ***Citizenship and Human Rights: A Framework for Analysis***

In order to begin to explore some of these complex issues, the paper uses the notion of citizenship as a point of departure for analysis, recognising that the inability to form or assert the bond of citizenship leaves individuals stateless, alienated and at greater risk of human rights violations, including forced displacement. However, the paper also acknowledges that other forms of belonging play an integral, if not dominant, role in people’s lives – especially in a context such as the Great Lakes region: it is self evident that people throughout the Great Lakes region continue to have their rights violated in multiple ways regardless of their relationship to the state. Therefore, to the extent that citizenship as currently administered has too often failed to provide protection, it is clear that the debate needs to be broadened and reconceived. Understandings of belonging, particularly as they relate to a person’s citizenship of a country and the ability to ensure their safety and security, need to be interpreted with greater flexibility. Consequently citizenship is

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<sup>3</sup> A number of refugees from this group were approved for resettlement to third countries – some 8,500 of the ‘1972 Burundian refugees’ were resettled in the USA in 2007 – but future resettlement possibilities seem unlikely at this juncture. See UNHCR, “Tanzania: Burundian Refugees to be Resettled in USA”, 18 May 2007.

recognised as one of a number of identity markers in any given situation, but one that is imbued with specific significance in relation to access to rights given the importance of the *national* framework within which rights are realised.

Prior to the development of humanitarian and human rights law, citizenship was the principle tool for accessing national protection and rights. Over the last thirty years, however, the evolution of international and human rights law has helped to break down the exclusivity of the citizen-state link when it comes to identifying the entity responsible for an individual's safety and security. In particular, very early on in the development of human rights law, the UN Refugee Convention on the Status of Refugees created obligations for states to protect non-citizens who were being persecuted by their own countries. The creation of refugee law constituted one of the first direct challenges to state sovereignty with respect to the control of state borders, inserting the refugee into a new community and establishing a basic status and set of rights to which the persecuted exile was entitled. Although from the perspective of international law the conferral and recognition of citizenship is still viewed as the sole prerogative of states, these developments have also begun to erode the absolute nature of state discretion with respect to a range of issues related to citizenship, from the loss and acquisition of nationality and how the rights attached to citizenship are protected and enjoyed, to the identification of situations in which a state is obliged to provide protection and support to individuals with whom it has no citizen link.<sup>4</sup> The prospect of opening up citizenship in this way, however, poses numerous challenges, from reconfiguring the notion of national belonging, to demarking the proper boundaries of national and international concern and engagement.

This study, therefore, attempts to integrate the perspectives of refugees into a process that appears to fit neatly within acceptable current international legal and policy frameworks, but is, in fact, more complex and harbours important implications for re-thinking citizenship and belonging in the region. It brings into focus the need to understand citizenship in the broader context of integration and access to rights and not to merely regard legal citizenship as a solution in and of itself. Indeed, the findings indicate that refugees are contesting the extent to which citizenship, as it is being applied, provides a long-term solution to displacement: for many, the inflexibility in the process undermines its potential. The analysis therefore seeks to explore other markers of identity that are relevant in this context and how they relate to wider notions of inclusion and exclusion. Thus, as a case study, the findings are both unique to the specific context in which they relate, and point to some of the numerous complex dynamics of identity and belonging in the Great Lakes region that will be explored as the wider project, of which it is a part, develops.

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<sup>4</sup> At the most fundamental level, the Universal Declaration of Human Rights ascribes to all human beings the right to a nationality. This right is based on the expectation that national membership will provide individuals with access to the rights and protections of citizenship that will, in turn, enable the realization of other human rights. It does not, however, confer a right to a particular citizenship. The Convention on the Reduction of Statelessness, which came into force in 1975, recognizes that persons can be both *de jure* and *de facto* stateless (without effective nationality) but offers little in the way of binding obligations on states. In Africa, the elaboration of a number of rights for the non-citizen and of the forcibly displaced, coupled with the conception of individual and collective rights set out in the African Charter on Human and Peoples Rights, have certainly set the normative stage for the beginning of a discussion of a theory of citizenship that is rooted in a state's recognition of a responsibility to protect rather than determined by the existence of a citizen-state nexus based on traditional categories of bloodline or place of birth. See *inter alia*, Amnesty International v. Zambia, 5 May 1999; Union Inter Africaine des Droits de l'Homme and others v. Angola, 11 November 1997; Rencontre Africaine pour la Defense des Droits de l'Homme v. Zambia, October 1997. See more generally, *A Guide to the Use of the African Human Rights System in the Protection of Refugees*, Chaloka Beyani, available from the International Refugee Rights Initiative and the Windle Charitable Trust.



## ***Refugees Who Fled Burundi in 1972***

The focus of the paper is on a group of Burundian refugees who fled to Tanzania in the early 1970s. They were forced into exile after Burundi's Tutsi-controlled army, which had been called in to halt a Hutu rebellion in a southern province, went on a two month rampage, killing up to 150,000 Hutu and forcing over 150,000 to flee.<sup>5</sup> The group originally settled in different parts of Kigoma, mostly in border villages and Kigoma town, until the government created Ulyankulu, Katumba and Mishamo settlements in Tabora and Rukwa regions.<sup>6</sup> The settlements were originally set up along the same *Ujamaa*<sup>7</sup> village system as the rest of Tanzania. By 1985, they were considered self-sufficient and administration was handed over from the UNHCR to the government of Tanzania. All the settlements<sup>8</sup> have high population densities: at the time of the 2007 census, there were 222,036 refugees in the settlements and, of this number, 82% were born in Tanzania.

Those who did not move to the settlements – or who moved there only temporarily – are considered to be “self-settled”. They were officially registered in the 1988 census and given refugee identity cards.<sup>9</sup> The *Ujamaa* villagisation programme also allowed for some of the Burundian refugees who had initially spontaneously settled along the border villages to be given refugee permits and to self-settle in villages. For example, Rusaba B village developed in 1975 specifically for such refugees – although many have subsequently moved, particularly to six neighbouring villages in Kasulu.<sup>10</sup> At the same time, business people or urban refugees were given permits, which enabled them to settle in Kigoma town. None of these so called “self-settled” refugees received any assistance from UNHCR, but they were administered by a Settlement Commander based in Kigoma and an Assistant Settlement Commander in Kasulu town.<sup>11</sup>

Although a number of Burundian refugees left in 1992 when Melchior Ndadaye was elected president in Burundi, many returned to Tanzania in 1993 when he was killed.<sup>12</sup> In 1993, therefore, a second influx of Burundian refugees, commonly referred to as “the new case load”, were settled in camps in Ngara (Kagera region) and Kibondo and Kasulu districts in Kigoma regions. Unlike those in the settlements, these refugees were given only small plots of land on which to build their houses and were heavily reliant on humanitarian assistance. The majority of these refugees have now been repatriated, with only four out of the original 11 camps remaining.<sup>13</sup> Unlike the 1972 origin refugees living in the settlements, they are not being given the option to naturalise through the current scheme.

<sup>5</sup> P. Uvin, 1999. “Ethnicity and Power in Burundi and Rwanda: Different Paths to Mass Violence.” *Comparative Politics*, 31(3): 253-271. This number was to grow to over 200,000 over the course of the following months. As Uvin comments, “These events constitute the defining moments in independent Burundi's history. They crystallised Hutu and Tutsi identities and created a climate of permanent mutual fear” (p. 258).

<sup>6</sup> The term “settlement” in Tanzania is used differently to “camp” where more recent influxes of refugees have been housed. Although there are some differences between camps and settlements in this instance, in the main part the difference is primarily semantic under Tanzanian law: both represent refugees being kept within confined areas of land with restrictions on their freedom of movement.

<sup>7</sup> *Ujamaa* refers essentially to the collectivisation of agriculture through Tanzania's founding President's determination to create socialist villages throughout the rural areas. For details see J.K. Nyerere, 1973. *Freedom and Development*, Oxford University Press.

<sup>8</sup> The term “settlement” in Tanzania is used differently to “camp” where more recent influxes of refugees have been housed. Although there are some differences between camps and settlements, the difference is primarily semantic under Tanzanian law: both represent refugees being kept within confined areas of land with restrictions on their freedom of movement.

<sup>9</sup> Interview with government official, Dar es Salaam, 15 April 2008.

<sup>10</sup> It is important to note that Rusaba B is not a settlement, but a village in Tanzania in which the majority are Burundian refugees. Refugees have also settled in a number of other villages, including Heru Ushingo, Kilelelma, Muyama and Nyarugusu.

<sup>11</sup> Communication with government official, Dar es Salaam, 22 October 2008.

<sup>12</sup> As the first democratically elected and first Hutu president of Burundi, Ndadaye's election signalled favourable conditions for return for Burundian refugees who were primarily of Hutu descent. However, he was assassinated after only three months in office.

<sup>13</sup> Rose Mwalongo. “Integration of Refugees not Easy”. *The Guardian*. 19 August 2008.

With official peace in Burundi, and in keeping with the government of Tanzania's desire to significantly reduce the number of refugees within its borders, there is now an impetus to find durable solutions for the 1972 refugees. The group is being considered a distinct caseload by the government of Tanzania and UNHCR due to the length of time they have spent in exile (the majority were, in fact, born in Tanzania); the fact that it may be more difficult for them to recover land and other property in Burundi given the length of their absence; and their economic benefit to Tanzania.<sup>14</sup> At the October 2007 EXCOM meeting in Geneva, Tanzania's Minister of Home Affairs formally announced a willingness to naturalise those who wish to stay.

The government of Tanzania and UNHCR then launched a programme whereby refugees are being given the choice between naturalisation – leading to Tanzanian citizenship – or repatriating to Burundi. As a starting point for the process, an official report was commissioned by the Old Settlement Task Force, which includes representatives of the Ministry of Home Affairs (MHA), UNHCR and the Burundian Embassy, to explore key issues linked to durable solutions for the 1972 refugees living in the settlements.<sup>15</sup> Released at the end of 2007, the findings showed that of the 222,036 refugees living in the settlements, 21% wanted to repatriate while 79% preferred naturalisation.<sup>16</sup> The report pointed out that the number of those wanting to return to Burundi (approximately one fifth) roughly corresponded with the number of refugees born in Burundi. It also suggested that the government was considering closing Mishamo and Katumba settlements, and that Ulyankulu would either be closed down or reconfigured.<sup>17</sup>

The future of self-settled refugees remains more ambiguous. In early 2007, the Directorate of Refugee Services in the Ministry of Home Affairs conducted a census to count self-settled refugees in Kigoma against an earlier census of "illegal immigrants". The guidelines for the census stipulated that only the 1972 refugees who had been registered and had refugee permits be counted. The guidelines also indicated that after the counting exercise, there would be a registration exercise in which everybody would be required to be present in Rusaba B village. According to one government official, the second registration exercise, which had not taken place at the time of the research, was expected to offer the refugees an opportunity to choose between repatriation and naturalisation under the same conditions and further to the same procedures as that applied to the settlement population.<sup>18</sup> Interviews with other government officials, however, suggested that a final decision on whether to extend the process to this caseload had not been made, whilst communication with the government just prior to publication indicates that a decision will be made once the process in the settlements has been completed.<sup>19</sup>

## ***Tanzania: A Host to Refugees***

Tanzania has a reputation as one of the most welcoming refugee hosts in the world. With no armed conflicts within the country since independence, it has provided safety and refuge to millions of refugees over many decades, providing land for settlement – and even citizenship at times – offering a level of protection and assistance not seen in much of the world today. The willingness of Tanzania's first post-independence president, Julius Nyerere, to welcome refugees set the tone for this policy, in part attributable to a Pan-African vision that superseded the constraints of colonially-imposed boundaries and

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<sup>14</sup> SA3 Ltd, 2007. "Study of Tanzania's Old Settlements Hosting the 1972 Burundian Refugees." SA3 Ltd, December, p. 7 – 8.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Interview with government official, Kasulu, 3 July 2008.

<sup>19</sup> Communication with government official, Dar es Salaam, 22 October 2008.

thus allowed for the acceptance of migratory peoples.<sup>20</sup> This ideological emphasis on the importance of supra-national identities and understandings of belonging is credited with having had a direct influence on the ability of refugees to exercise their rights and find protection in Tanzania.

During the 1980s and 1990s, however, refugee policy in Tanzania shifted dramatically and this had an impact on both the established and newly arriving refugees. Burundian refugees who arrived in the 1990s, for example, were settled in camps with land for housing and gardening only and with no land for farming. For those in the settlements, controls on their freedom of movement increased: although they had long required permission to leave their settlements, these controls became stricter over time, and eventually their movements were restricted to a four-kilometre radius from the centre of the camps. As a matter of Tanzanian government policy, repatriation was increasingly insisted on as the preferred solution,<sup>21</sup> with several repatriation efforts accompanied by government ultimatums, leading to concerns about the voluntariness of such exercises.<sup>22</sup>

Unrecognised or self-settled refugees also felt the impact of tightening restrictions, becoming increasingly vulnerable to arbitrary arrest and *refoulement*.<sup>23</sup> Even those refugees who have lived in villages in Tanzania for over 30 years have found the sustainability of their situation more and more precarious in the light of wider changes in law and policy. As early as 1987, the Tanzanian government began an operation to expel “irregulars” living illegally in the western regions, particularly in towns.<sup>24</sup> In late 1997, the Tanzanian government ordered the army to round up all foreigners living outside refugee camps, asserting that this was necessary to protect Tanzanian citizens living close to the border with Burundi. The Burundian government had alleged that Burundian rebels were engaged in arms trafficking and cross-border incursions and had threatened to act if the Tanzanian government did not. With little or no notice, the Tanzanian army swept through towns and villages close to the Burundian and Rwandan borders apprehending tens of thousands of foreigners, some of whom had been granted permits to live in these villages. These refugees and migrants were given the “choice” of being forced back to their country of origin or relocated to the refugee camps. Although Congolese and Rwandans were also affected, the bulk of the refugees and migrants rounded up were Burundian, including a large number who had been part of the 1972 influx.<sup>25</sup>

It was not just forced returns and expulsions that were the result of this policy shift. Although policy and practice in Tanzania in the 1970s had allowed for the allocation of land to refugees (a policy from which the

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<sup>20</sup> S. Chaulia, 2003. “The Politics of Refugee Hosting in Tanzania: From Open Door to Unsustainability, Insecurity and Receding Receptivity.” *Journal of Refugee Studies*, 16(2), p. 153.

<sup>21</sup> O. Kweka, 2007. “The Impact of Structural Adjustment Program on the Refugee Policy in Tanzania: Implications for Survival Strategies of Burundian Refugees in Camps.” A Ph.D. Dissertation Submitted to the Faculty of the Graduate School of the University of Minnesota, p. 73.

<sup>22</sup> For more details on this exercise see Beth E. Whitaker, 2002. “Changing Priorities in Refugee Protection: the Rwandan Repatriation from Tanzania.” UNHCR, Working Paper No. 53.

<sup>23</sup> E. Mogire, 2006. “Preventing or abetting: refugee militarization in Tanzania.” (In Muggah, R., *No Refuge: The Crisis of Refugee Militarization in Africa*. London and New York: Zed Books. Pp. 137 – 180), p. 141.

<sup>24</sup> L. Malkki, 1995. *Purity and Exile: Violence, Memory and National Cosmology among Hutu Refugees in Tanzania*. Chicago: University of Chicago Press.

<sup>25</sup> In addition to this push for repatriation, and to counter rebel and criminal activity in the camps, UNHCR instigated a “security package” for camps in western Tanzania at a cost of US\$1.5 million. Prior to this there was no police presence in the camps. Although the impact has been questionable at best, it reveals an ongoing awareness of the need to generate protection within the settlement/camp environment. For a critique of the security package, see J. Crisp, 2001. “Lessons learned from the implementation of the Tanzania security package.” Evaluation and Policy Analysis Unit, UNHCR.

refugees in this study benefited), this approach had been reversed by the 1990s.<sup>26</sup> The 1998 Refugees Act, which replaced the 1966 Refugees Control Act, reinforced the requirement found in the 1966 Act that refugees live in settlements or designated areas.<sup>27</sup> Although the 1998 Act represented significant advances in terms of incorporating the refugee definitions found in the 1951 United Nations (UN) and 1969 Organisation of African Union (OAU) Refugee Conventions into national law and expanding protection in some areas, it represented a step backward in terms of prospects for integration. In addition to reinforcing restrictions on freedom of movement, the 1998 Act emphasises the negative effects of hosting refugees, and disallows refugees from working without permits – subject to a fine of \$800.<sup>28</sup>

This shift in policy has been linked to a number of causal factors. The post-genocide exodus from Rwanda and its association with militants and *genocidaires*, for instance, led to concerns about crime and insecurity being caused by militants among the refugees.<sup>29</sup> In addition, economic strains and environmental degradation have been attributed to the presence of refugees in Tanzania.<sup>30</sup> Whatever the cause of the policy shift, the series of forced returns and expulsions, in addition to being in violation of both international and national law, undermined refugee protection and threatened to destroy the long and generous tradition of asylum for which Tanzania has been so well respected.

Building on the Refugee Act of 1998, Tanzania enacted its first refugee policy in 2003, the 2003 National Refugee Policy.<sup>31</sup> Although the Policy recognises elements of the three traditional durable solutions as available to refugees, it emphasises repatriation as “the best solution”<sup>32</sup> and recasts “local integration” as “local settlement” – the latter being characterised as “merely a temporary solution rather than a permanent one” as opposed to a “permanent stay” and, therefore, a durable solution.<sup>33</sup> The Policy also maintained the limitations on refugee access to land within the context of highly restricted freedom of movement.

Thus despite the fact that Tanzania continues to be a frontrunner in hosting refugees in the Great Lakes Region, many of the rights and freedoms Tanzania formerly granted to refugees have been rescinded over the last decade,<sup>34</sup> reflecting the extent to which Tanzania has become a “fatigued host country”.<sup>35</sup> Current action with regard to durable solutions for the 1972 Burundian refugees, therefore, needs to be viewed within this broader historical context. The willingness, as a matter of national policy, to extend the option of securing citizenship to the refugees who are the subject of this study, is most welcome.

From the perspective of regional and international policy, this significant and progressive policy decision by Tanzania, supported by UNHCR, revives the spirit of the original conception of the international refugee protection regime. Refugee status was always intended to be a temporary or bridge status – an emergency

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<sup>26</sup> It was enacted under President Nyerere who recognised the plight of all Africans and vowed to support refugees until “...the whole of Africa becomes free.” See K. Kamanga, 2005. “The (Tanzanian) Refugees Act of 1998: Some Legal and Policy Implications.” *Journal of Refugee Studies*. 18(1), p. 4.

<sup>27</sup> Ibid.

<sup>28</sup> United States Committee for Refugees and Immigrants, 2007. “Tanzania”. *World Refugee Survey*.

<sup>29</sup> See, for example, Mogire 2006.

<sup>30</sup> L. Barry, 2008. “The impact of environmental degradation on refugee-host relations: a case study from Tanzania.” Research Paper No. 151, Policy Development and Evaluation Service, UNHCR. As she goes on to say, the Tanzanian government has continually and publicly emphasized the environmental degradation caused by refugees – which, in turn, has been a significant factor in putting pressure on refugee/host relations. Although they are xenophobic in tone, they are none-the-less essentially accurate.

<sup>31</sup> Prior to this, refugee issues were guided by the wider development policy of the country. See Kweka p. 47-57.

<sup>32</sup> National Refugee Policy, p.7.

<sup>33</sup> Kweka, 2007, p. 69.

<sup>34</sup> Ibid.

<sup>35</sup> Chaulia, 2003.

response by the international community to the loss of national protection – which would end as soon as effective protection by either the original or another state became viable. The UN Refugee Convention therefore urged (but did not require) states to “as far as possible facilitate the assimilation and naturalisation of refugees” and to “make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.”<sup>36</sup> The practice for the last decades, however, has been to overlook the exhortations of principle in the Convention, and to see refugee status as an end in itself – or indeed as an often lengthy precursor to return to the country of origin, persistently the preferred of the three durable solutions. The next logical step in community attachment for those living in long term tenuous exile, namely granting of citizenship, has continued to be perceived as a matter that should be left entirely to the discretion of the state. The result has been millions of refugees in limbo throughout the globe, denied access to effective citizenship.

## METHODOLOGY

The field research, which took place from 16 June to 12 July 2008, was divided between Ulyankulu settlement and the Kigoma region. These two sites were chosen in order to incorporate the views and perspectives of two legally, as well as socio-culturally, distinct groups of refugees: settlement and self-settled refugees. The populations represent two different experiences of both integration and conception of their own identity. For instance, Malkki has documented how the settlement experience helped to solidify a Hutu and refugee identity, while self-settled refugees, not surprisingly, attained a greater degree of integration and expressed more flexible articulations of identity.<sup>37</sup> With such radically different experiences of exile and identity, the research has allowed for comparative analysis of how the two groups approach the possibility of formalising and re-defining their stay in Tanzania.

Ulyankulu is located north of Tabora region, in Urambo District.<sup>38</sup> Part of the settlement, which covers an area of 1,200 sq kilometres, was previously a game reserve. It is approximately 90 kilometres from Tabora town, along a good road that is passable all year. The main economic activity in the area is farming, and tobacco is the main cash crop. Other crops such as maize, beans, finger millet and cassava are grown for subsistence and cash. Ulyankulu has a number of market places, 15 primary schools, three working secondary schools with a fourth under construction, one French school, five dispensaries, one Health Centre, a number of churches, and a Vocational Training Education College. While considerable infrastructural problems remain, the presence of refugees has generated an improvement in infrastructure in the area, and increased food production attracts many traders. The settlement includes the second largest urban centre after the district headquarters, Urambo.

The Kigoma region lies in the far west of Tanzania and has three districts: Kigoma, Kasulu and Kibondo. Kigoma district has two parts, comprised of the Municipal (urban) and the District (rural) authorities. Due to the small numbers of self-settled refugees in Kibondo, the field research took place in Kigoma and Kasulu districts only. Kasulu’s environment supports the growth of coffee, cassava and bananas, similar to the environment in Burundi. The refugees were initially settled in Rusaba B, but are now scattered across six other villages in Kasulu, including, Kinazi, Janda, Munzeze, Katundu, and Kitanga, in Kigoma town and

<sup>36</sup> 1951 UN Refugee Convention, art. 34.

<sup>37</sup> Many self-settled refugees documented by Malkki had employed non-legal mechanisms such as identification with the Waha ethnic group and intermarriage as mechanisms for asserting *de facto* Tanzanian citizenship. See L. Malkki, 1995. *Purity and Exile: Violence, Memory and National Cosmology among Hutu Refugees in Tanzania*. Chicago: University of Chicago Press.

<sup>38</sup> The settlement is located where the former Chief Mirambo of the Nyamwezi lived, and his grave, and those of his predecessors, lies within the settlement.

Kigoma rural district, where they live alongside the local Tanzanian population. In Kigoma town and the rural district, refugees, especially businessmen and fishermen, are attracted by Lake Tanganyika. Self-settled refugees from Kasulu who are fishermen also commute from other areas for a week or two and fish along the Lake. Therefore Kigoma, once a labour reserve area, is now a region inhabited by many immigrants and Tanzanians from other regions some of whom are drawn by jobs in international humanitarian organisations. It is also an area in which there are a number of security concerns: lack of a strong government on the side of Burundi and the Democratic Republic of Congo (DRC) and adequate resources to patrol the lake on the Tanzania side were mentioned as two factors accounting for the growing number of illegal immigrants and insecurity in the area. It was also reported that a considerable number of weapons are smuggled across the lake into the country.

During the course of the field research, 162 individuals (127 men and 35 women) participated in interviews. Among these, 14 interviewees were Tanzanians living in proximity to self-settled refugees (12 men and two women). For the refugee population, two sets of interview maps were prepared – one for refugees living in the settlements and the other for self-settled refugees. Questions focused on demographic data, displacement history, challenges to durable solutions, refugees' understanding of their rights, their ideas of citizenship and belonging, and the question of peace in Burundi. The interviews were conducted in Kiswahili except for a few interviews in Kigoma that were conducted in Kirundi or Kiha.<sup>39</sup> Further interviews were conducted with government officials, including officers from the Ministry of Home affairs (Directorate of Refugee Services and Immigration Department), Regional and District officers, and international and local organisations working in the field, including staff members from the United Nations High Commission for Refugees (UNHCR). At the end of the fieldwork, debriefing meetings were held with these officers in order to discuss issues that emerged during the research and in order to obtain feedback.

The research took place at a critical moment in the lives of the refugees, at a point at which they were making life-changing decisions. When answering questions regarding the basis on which they had made their choice, not surprisingly refugees were careful in how they responded. For those living in Ulyankulu, caution was based on what they had already chosen – particularly in the case of those who have opted for naturalisation as they did not want to jeopardise their applications – while for self-settled refugees, responses were tied to what they wanted: in the case of the latter, it was apparent that refugees were anxiously waiting for the second registration, and the research team was often assumed to be registration officials. Consequently, these concerns are reflected in some interviews in which interviewees mainly wanted to talk about their desire to be naturalised and were reluctant to talk about other issues. At the same time, many interviewees were willing to share their thoughts and experiences with regard to the current process, allowing for something of a balanced picture to emerge.

The findings of the research are presented through a consideration of the limitations on integration of refugees up to the present; the current naturalisation/repatriation procedures; the rationale for their choice of option as articulated by refugees; and, in conclusion, the dilemmas that these choices have presented.

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<sup>39</sup> Kiswahili is the national language in Tanzania and *lingua franca* for the region. Kirundi is the dominant language of Burundi, while Kiha is the language spoken by the Waha, the predominant ethnic community in Kigoma Region. The Waha and Burundi are not only proximate neighbours but there is a striking similarity between Kiha and Kirundi.

## REFUGEE STATUS: ONGOING EXCLUSION

In order to understand the ways in which refugees are currently making decisions regarding their future, it is important to consider the historical context in which these decisions are being made. Refugees who fled in 1972 have been living in Tanzania for almost four decades – and, indeed, many (82% in the case of settlement refugees)<sup>40</sup> were born in Tanzania and have never lived in Burundi. The majority have had access to land, basic services, and, for the most part, physical security. Their children have been educated in Kiswahili, using the Tanzanian curriculum,<sup>41</sup> and many have never been to Burundi. Yet despite their sustained presence within Tanzania, they have remained legally and socially marginalised from mainstream Tanzanian society. A key issue that emerged from the interviews was the limited extent to which refugees have obtained a sense of belonging in Tanzania: despite the services offered and the rights they have enjoyed, the sense of difference, and of marginalisation, have remained a defining feature of their lives.

### ***The Durability of Refugee Identity: Notions of Ongoing Marginalisation***

One of the most striking elements of the research findings was the extent to which the majority of those interviewed still identified themselves and were identified by others as refugees – or at least, guests – and as people who lacked legitimacy within the context of the national community. This sense of exclusion was reflected by settlement and self-settled refugees alike: they were acutely aware of their current status as refugees, a label that was seen as synonymous with significant levels of restriction. While many talked of their life in exile positively in terms of access to livelihoods, education and basic healthcare, there were numerous references to the fact that they did not have freedom of movement; were not allowed to vote; and were called “refugees.”

As one man said, “[l]ife was good because we could cultivate and eat without problem and get excess to sell. But I was not happy with the restrictions on my movement in the settlements. And I did not like it when Tanzanians called me *mkimbizi* [refugee].”<sup>42</sup> Likewise another man said, “in Tanzania all that you are is a refugee.”<sup>43</sup> Particularly in the case of refugees living in the settlements, a significant limitation on integration has revolved around the fact that they were settled and continue to be confined to designated areas. Despite being given large portions of land for cultivation, restrictions on their freedom of movement have limited any social and political integration with surrounding areas. This limitation reveals the contradiction inherent in the local settlement policy, which, instead of generating local integration in reality has fostered difference and exclusion from mainstream Tanzanian society.

In practical terms, language serves as a key marker of difference and integration. One young woman, who was born in Ulyankulu and has never lived in Burundi, talked about her own experience of being identified as a refugee: “when I go out the police will catch me and say, she is a Burundian, she has to give us something small. They can recognise our Kiswahili as we do not pronounce properly [according to

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<sup>40</sup> SA3 Ltd, 2007.

<sup>41</sup> It is interesting to note that, while refugee schools in the *settlements* follow the Tanzanian curriculum, taught in Kiswahili, schools in the *camps* follow the Burundian curriculum and are taught in French.

<sup>42</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>43</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

Tanzanians]. But also the way we dress, unless you change they can tell that I am Burundian.”<sup>44</sup> In addition, refugees speak Kiswahili with a distinct accent while many women do not speak Kiswahili at all, marking them as different to Tanzanians.

The extent to which refugees feel marginalised from mainstream Tanzanian society is echoed in research conducted by Mbazumutima in 2007. He talks of the extent to which refugees in the settlements see themselves as “slaves” of the Tanzanian government, confined to settlements in order to limit, control and isolate them. Consequently notions of marginalisation have increased rather than decreased over time. Thus, as he comments with reference to restrictions on their freedom of movement, “[m]oving from Ulyankulu settlement to other parts of the country is like moving from one country to another.”<sup>45</sup>

Self-settled refugees were equally disquieted by the refugee label. Indeed most of the self-settled refugees interviewed referred to themselves as “guests” rather than refugees. One man said, “I identify myself as a foreigner of this country. I do not like to call myself a refugee although my permit states that I am a refugee.”<sup>46</sup> Yet their identity as refugees remains. As an NGO worker said, “most of those staying in town are the ones who have intermarried, but they are stigmatised as refugees.”<sup>47</sup> Likewise, while enjoying considerably greater freedom of movement than those in the camps and settlements, they still feel constrained. As one young man said, “if one wants to go out of the village one has to seek permission from the Village Chairman. I have noted that it is only we who are called refugees who are subjected to this system.”<sup>48</sup> Self-settled refugees were also acutely aware that they were not allowed to be involved in the politics of the country, with a distinction made in many of the interviews between political matters and “volunteering in public works”.

However, it was also apparent that, for self-settled refugees, the line between exclusion from and inclusion within mainstream Tanzanian society was more blurred. Urban-based self-settled refugees have used strategies to hide their refugee status and, therefore, their Burundian identity, a coping mechanism that is well documented by both Malkki and Sommers.<sup>49</sup> Not surprisingly, these refugees have become considerably more integrated by presenting themselves as Tanzanians.<sup>50</sup> Some of them reported that they introduce themselves as Tanzanians or Waha from Kigoma and, when asked about the languages they speak, they identified Kiha (a local language spoken by Kigoma residents) instead of Kirundi. Even so, Tanzanians commented on the fact that although it is not easy to differentiate a Mha<sup>51</sup> from Burundi from one from Kigoma by their look, the accent has remained distinguishable. The opportunity for integration, as well as its limitations, was articulated by one young man: “there are no differences [between Tanzanians and ourselves]. Our fellow youths have married Tanzanians. They were telling me to marry a Tanzanian

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<sup>44</sup> Interview with refugee woman, Ulyankulu, 26 June 2008.

<sup>45</sup> Theodore Mbazumutima, 2007, “The role of the Anglican Church in ministry to Burundian refugees in Tanzania with particular reference to the notions of hope and homeland.” Submitted in fulfilment of the requirements for the degree of Masters of Theology, University of South Africa, p. 67.

<sup>46</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 5 July 2008.

<sup>47</sup> Key informant interview, Tabora, 16 June 2008.

<sup>48</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 4 July 2008.

<sup>49</sup> See M. Sommers, 2001, *Fear in Bongoland: Burundi Refugees in Urban Tanzania*, New York and Oxford: Berghahn Books; and Malkki, 1995.

<sup>50</sup> For many of those in the villages whose parents were originally given permits, travel outside the region is possible with an introduction letter from the village executive officer that identifies them as “residents” of a certain area.

<sup>51</sup> *Kiswahili* is the national language in Tanzania and *lingua franca* for the region. *Kirundi* is the national language for *Barundi* (Burundi nationals) while *Kiha* is the language spoken by *Waha*, the predominant ethnic community in Kigoma Region. The *Waha* and *Barundi* are not only proximate neighbours but there is a striking similarity between *Kiha* and *Kirundi*.



and settle down. So that is what I am planning to do.”<sup>52</sup> However, as he admitted later in the interview, even if he married a Tanzanian he would “still be a refugee by name.” In other words, while marriage might make him “more Tanzanian”, he would retain his identity as a refugee.<sup>53</sup>

For the majority of Burundians living in Tanzania, therefore, their refugee status has remained a dominant – and, by implication, negative – identity marker in as much as it has continued to define their social status within Tanzania. Although refugees made some reference to mixing with Tanzanians, particularly in the context of markets, churches and football, interviewees more often emphasised their distinctiveness as refugees. Thus, while Malkki’s research in the 1980s pointed to the way in which retaining a Burundian and refugee identity was a specific coping strategy in the settlements, after almost four decades of displacement many refugees expressed frustration and concern with the continued application of the “refugee” label:<sup>54</sup> it leaves them feeling marginalised and excluded from mainstream Tanzanian society, and creates a real challenge for the current initiative to realise the potential for genuine integration for those who chose to stay.

### ***Relations Between Tanzanians and Refugees***

Interviews with Tanzanian informants reinforced the extent to which refugees have an entrenched and distinct identity. Despite the length of time that the refugees have been living in Tanzania, they continue to perceive them as outsiders. While this perception was not negative per se, it underscores the experiences of exclusion articulated by refugees. In the case of refugees living in the settlements, the general consensus was that the presence of refugees was positive. The main source of conflict mentioned related to tensions between the Sukuma people who are cattle keepers and the refugee cultivators, an issue more to do with conflicting land use than national status.

However, perceptions amongst Tanzanians living in Kigoma were more ambiguous. On the one hand, many Tanzanians talked of their good relationship with refugees in the area, emphasising their support for the naturalisation effort. For instance, a Tanzanian man said this:

We have a friendly relation [with refugees] but not very serious because they are always suspicious that one day they shall be repatriated back to their country... To give them assurance, the government should make everything clear about their destiny... If they are granted Tanzanian citizenship they shall settle and cooperate with us in development activities.<sup>55</sup>

Likewise Tanzanian teachers working with self-settled refugees in Rusaba B, responded positively to the idea of naturalising refugees on the basis of the fact that they have stayed in Tanzania for many years.

However, there were a number of Tanzanians living in Kigoma who showed hostility towards the refugees and were apprehensive about the current naturalisation initiative. Such negative statements were often

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<sup>52</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 5 July 2008.

<sup>53</sup> According to the 1995 Citizenship Act, foreign women married to Tanzanian men are allowed to naturalise, but men married to Tanzanian women are not.

<sup>54</sup> See Malkki, 1996.

<sup>55</sup> Interview with Tanzanian man, Kigoma, 9 July 2008.

justified with reference to the alleged involvement of refugees in criminal activity.<sup>56</sup> For instance, informal discussion with some government officials in Kigoma town revealed that they do not support naturalisation on the basis that refugees are “active” when it comes to Tanzanian politics and, consequently, they are concerned that they might jeopardise peace in Tanzania. Such comments might be linked to allegations of crime and insecurity caused by militants among the refugees since the considerable influx in 1994, which, in turn, has exacerbated xenophobic sentiment towards refugees.<sup>57</sup> As one Tanzanian said, “if you go to Katumba they have stayed there for 36 years but they are still linked to their country.”<sup>58</sup> These links were interpreted as evidence that they were importing conflict into Tanzania. Another man said:

It seems that they are not satisfied by the refuge they get here. They like to go to Burundi and come here. Sometimes they invite guests without reporting to the village leaders. They also need to remove their differences. When they see a tall person here in our village they are just worried.<sup>59</sup> They will ask who are these visitors and why are they here and how did they come here?<sup>60</sup>

In addition, considerations of resources and benefits to the country also affect the way in which Tanzanians view the current naturalisation initiative. A government official summed up a widely held view: “those who are easy to naturalise are those who bring profit to Tanzania.”<sup>61</sup> Another government official mentioned that he would prefer Burundian refugees who were settled in town initially to be granted permanent resident permits and only receive naturalisation once they had proved that they were serious about “becoming Tanzanian” and recalled how some of them had been given citizenship certificates in 1990s, but when Ndadaye was elected in Burundi, they burnt their certificates and “used bad words to Tanzanians”.<sup>62</sup>

In summary, therefore, it is apparent that both settlement and self-settled refugees have retained a strong sense of identity as Burundian refugees, despite the length of time spent in Tanzania. The findings highlight the extent to which legal status – in this case, as refugees – impacts social distinctions. Thus a person born in Tanzania of Burundian parents, who has lived in Tanzania all of his/her life, has retained a clear identity as a Burundian refugee. Whether this has been a deliberate survival strategy or a result of Tanzanian policies that have worked against integration is unclear. What is clear is that both refugee status and nationality are still dominant identity markers for this group. Questions remain, however, about the relative importance of formal legal status and cultural factors such as language: whether or not naturalisation will close the gap between refugees and Tanzanians remains to be seen.

## **THE REPATRIATION/NATURALISATION PROCESS**

It is in this context that the current search for durable solutions is taking place, the end result of which signifies a potential end to refugee status at a legal level for the 1972 group of refugees. However, while the intention of the process is clearly positive, the process itself was found to be causing a number of

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<sup>56</sup> Such perceptions are not unique to Tanzania. The link between the presence of refugees and insecurity is an often unfounded assumption that has generated xenophobic sentiment in many refugee and immigrant-hosting areas around the world.

<sup>57</sup> See, for example, Mogire, 2006.

<sup>58</sup> Interview with government official, Kigoma, 3 July 2008.

<sup>59</sup> The speaker here is implying that the refugees, who are mostly Burundian Hutu, are fearful of Tutsi origin, who are presumed to be tall.

<sup>60</sup> Interview with Tanzanian man, Rusaba A, 9 June 2008.

<sup>61</sup> Interview with government official, Ulyankulu, 18 June 2008.

<sup>62</sup> By implication, this informant is suggesting that Tanzanian citizenship was only being used as a convenient form of identity until such time as conditions in Burundi should become favourable to their return, thus demonstrating their lack of allegiance to Tanzania despite applying for citizenship. Key informant interview, Kigoma, 3 July 2008.

concerns among refugees. The following section therefore considers the technicalities of the process that is currently taking place in the settlements before considering some of the implications for self-settled refugees.

In the settlements, the process began in July 2007 with a census, followed three months later by an individual registration process in which refugees were asked to choose between returning to Burundi or receiving naturalisation and staying in Tanzania.<sup>63</sup> At this stage, 79% stated they wished to apply for naturalisation.<sup>64</sup> With 222,036 people living in the settlements at the time of the census, the process, which is being carried out in a relatively short period of time, is clearly a massive logistical challenge. The government has moved the processing of naturalisation applications close to the settlements, including the police, immigration officers and lawyers necessary for the process. It has reduced the standard naturalisation application fee from \$800 to \$50, which is being paid by UNHCR on behalf of the refugees. The process has been further streamlined through having a group of Tanzanians readily available in the camps to act as “sponsors” (even though they do not necessarily know the individuals they are sponsoring), which is a requirement of the application process.

The government of Tanzania, represented by the Ministry of Home Affairs, (the Refugee Department, the Immigration Department, Police and the National Security and Defence Committee) is playing a major role in the repatriation and naturalisation process, while UNHCR is helping to facilitate and is also conducting the repatriation process. In March 2008, UNHCR established a field unit in Ulyankulu where, together with its implementing agency Tanganyika Christian Refugees Services (TCRS), they began the verification of the data for the naturalisation and repatriation processes. The Police and Immigration departments of Home Affairs are involved in the processing of the naturalisation applications, for instance finger printing and verifying household information, with lawyers present to witness the taking of oaths. TCRS and German Technical Cooperation (GTZ) are involved as implementing partners: TCRS is commissioned to do the clerical work and GTZ is involved in transportation.

There are no neutral observers in the process, although it appears that the Refugee Department is partially acting in this role, mainly by default. During the post-field research-debriefing meeting, UNHCR indicated that they are hoping to deploy a neutral desk of observers, but its effectiveness would be undermined if staffed, as indicated, by immigration officers who are unlikely to be viewed as neutral by refugees. At the time the fieldwork was conducted, only one village, Kaswa, out of 11 had completed the application process and a second village, Kanindo, was in the midst of the process.

## ***Repatriation***

Between 2002 and 2007, an estimated 378,800 Burundian refugees repatriated from around the region. Of this number, 38,900 were returning from Tanzania with UNHCR assistance, the majority from the camps hosting refugees who had arrived in the 1990s.<sup>65</sup> These refugees have been assisted with housing, legal advice, and the provision of health care and, since July 2007, UNHCR has included a cash grant of 50,000 Burundian francs (\$45 USD) for each returnee. Although the repatriation programme was well underway by the time that the current process began in the settlements and was originally due to be completed by

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<sup>63</sup> SA3 Ltd, 2007.

<sup>64</sup> Ibid.

<sup>65</sup> "Burundi" and "United Republic of Tanzania" in *UNHCR Global Report 2007*. UNHCR.

August 2008, by the time the research team began its work, only 2,570 people had been repatriated from the settlements.<sup>66</sup>

Throughout the research, it was clear that officials involved in the process are promoting repatriation as the preferred option. The phrase, “home is home”, is being repeated at every opportunity: it is written on a sign outside the UNHCR field unit offices where refugees go to process their repatriation/naturalisation documents; it was mentioned by the guest of honour on Refugee Day; and was printed on T-shirts to commemorate the day.<sup>67</sup> Not surprisingly, it was a phrase that was often repeated in the course of the interviews and in a meeting that was held between refugee leaders and the UNHCR and its implementing partners.<sup>68</sup> The emphasis on repatriation as the preferred official option was reinforced by a visit from government officials from Tanzania and Burundi. One refugee leader talked of this visit: “the Burundians asked us to go back and build the society. Masha [Tanzania’s minister for home affairs] told us while he was laughing that the real citizenship is obtained in Burundi. Therefore I have decided to voluntary repatriate.”<sup>69</sup> Indeed, the words “voluntary repatriation” were used effectively as one word by refugees, reflecting the extent to which all repatriation has become “voluntary repatriation” and its actual voluntariness no longer questioned.<sup>70</sup> Furthermore, those who originally opted for naturalisation are allowed to change their minds and opt for repatriation, but not the other way round.

Those being repatriated are given only a 100kg (originally 50kgs) allocation for goods in the UNHCR organised transportation process, and receive no compensation for property left behind. Some have rented trucks to take additional property, but many do not have the means to do this. Consequently there were numerous complaints from refugees that they were being forced to sell their goods for a poor price on a flooded market with buyers taking advantage of the fact the refugees are under pressure to sell before their repatriation date. People were particularly upset that they are not allowed to take their doors and windows with them, aware that these are critical commodities for rebuilding their homes in Burundi. They complained that Burundi is degraded in terms of forests, and that they will not be able to afford to buy wood for windows and doors there. Thus after 36 years of living in Tanzania, the refugees are returning home with little to show for their years of work, and the question remains as to what will happen to the property they have left behind. In particular it is not clear to what extent the provisions relating to refugee property in the context of repatriation – and indeed naturalisation – are being implemented, provisions that are critical with respect to the prospects for successful integration in Burundi. Similar questions are likely to arise if naturalised refugees are requested to relocate.

Although, it is understandable that UNCHR faces resource limitations in its repatriation efforts, it is important to recognise that the greater the extent to which returnees are allowed to take their own property and resources (built up over thirty years) with them, the more likely they are to integrate successfully. This is recognised in the 1998 Refugees Act, which provides that a repatriated refugee “may take with him any movable property which he lawfully owns provided he complies with any existing procedures or laws covering such property or the exportation of such property.”<sup>71</sup> The procedure must, as a minimum, accord with any regulations made under the Act stipulating such procedures. At the same time, even if

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<sup>66</sup> Key informant interview, Ulyankulu, 18 June 2008.

<sup>67</sup> Observation on Refugee Day, Ulyankulu, 20 June 2008.

<sup>68</sup> Participant observation, Ulyankulu, 26 June 2008.

<sup>69</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>70</sup> See B.S. Chimni, 1999. “From resettlement to involuntary repatriation: towards a critical history of durable solutions to refugee problems”. UNHCR: New Issues in Refugee Research, Working Paper no.2.

<sup>71</sup> Refugees Act No. 9 of 1998, art. 34(2). The position is, of course, also complicated by the fact that by operation some of those repatriating may in fact be Tanzanian citizens who may have additional property rights at law.

considerable restrictions on the export of property by repatriating refugees are permissible by regulation, at no time during the study was the possibility of compensation raised. The Act is clear on this aspect. Any “moveable or immoveable property” left behind by a repatriating refugee comes under the control of the authorities and “fair and adequate compensation” must be paid to the repatriating refugee “prior to his departure”.<sup>72</sup> In the case of property left behind, compensation should also be considered.<sup>73</sup>

A further concern that emerged from the research was the lack of information that refugees have been given regarding the situation in Burundi: no official visits were arranged for refugee representatives to go to Burundi before they had to make their decision, although a number of refugees arranged their own visits.<sup>74</sup> There were, as a result, numerous unanswered questions regarding the implications of their return. In particular, refugees wanted to know how the government of Burundi was going to receive them, both with respect to material assistance and with regard to assisting them more generally in their reintegration within Burundi. Regardless of these concerns, however, the process is moving forward and refugees are beginning to return.<sup>75</sup>

## ***Naturalisation***

Following the original statement of intent as outlined in the October 2007 survey, for those who expressed their desire to naturalise the next step in the process is the completion of an application form in the field unit offices. This process had started at the time of the field research. The application form lists the head of the family, the wife and children, with anyone over 18 supposed to apply separately. It is at the stage of filling out this application that refugees have the option to change their intention from naturalisation to repatriation. Those who are applying for naturalisation then proceed with the process of having their form signed by sponsors and witnesses, taking oaths at the lawyer’s desk, having their finger prints taken at the police desk, and finally proceeding for verification by immigration officers. At the time of the fieldwork, representatives of the National Security and Defence Committee were expected to arrive on 3 July for review of the applications before the Minister for Home Affairs had the opportunity to review their application. The Minister’s decision is final.

Although this meant that at the time of the field research none of the refugees should have received formal decisions on their applications, a number complained of exclusion from the process or “rejection”. It is not clear whether this might be a result of refusal of immigration officials or others staffing the process to submit certain applications or simple misunderstanding by refugees. Either way, clarification is essential to a fair and transparent process, and particularly so where the consequence of a decision not to process a naturalisation application is entry on the repatriation list.

Those whose family configuration did not conform to specific structures, for instance couples that have never formally married or those who have separated but never formally divorced, spoke of encountering

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<sup>72</sup> Refugees Act No. 9 of 1998, art. 34(3).

<sup>73</sup> Further the Refugees Act is clear that in the event that fair and adequate compensation is not provided to the refugee-owner of the property within one year of departure, such property vests in a trust set up for the refugees which in turn is charged with paying adequate compensation to the refugee-owner or his legal representatives. Refugees Act No. 9 of 1998, art. 34(4)). In the alternative, the trust may sell the property at market price, and the proceeds – less deductions for necessary costs – will be paid to the refugee-owner or his legal representatives (Refugees Act No. 9 of 1998, art. 34(4)).

<sup>74</sup> The problems associated with the fact that refugees had not been able to visit Burundi prior to making a decision were alluded to in a communication with a government official prior to publication. (Communication with government official, Dar es Salaam, 22 October 2008.)

<sup>75</sup> In light of the lack of information regarding the situation in Burundi, there is an urgent need for monitoring and research on the return process from within Burundi.

complications. One woman whose husband left her years ago claimed she is being denied naturalisation because he is not there – she has not seen him for decades – “and they are saying they do not separate families.”<sup>76</sup> Children who are looked after by a family that has not officially adopted them are in danger of being separated, especially if the family has applied for naturalisation. With men playing a dominant role in the decision-making process – partly as a result of cultural pressures, and compounded by lower levels of education amongst women – women are bearing the brunt of inequalities in the process. As one NGO worker said, “if a man wants to repatriate, automatically the woman will repatriate.”<sup>77</sup> There was further confusion surrounding the applications of students who were 18 years and older and, according to their age, qualify to apply by themselves, but who still depend on their parents. For instance, some parents wanted to leave their children who were studying behind with relatives in order to complete their education, but this was not allowed.

In addition, a number of groups are not entitled to apply for naturalisation. Anyone with a criminal record is not eligible under the scheme although, according to one UNHCR official, in practice, “criminals include those who were taken to the police station without considering whether they were convicted or not” – which would appear to be an overly broad reading of this exception.<sup>78</sup> People with disabilities are vulnerable as they were reportedly not eligible to apply individually<sup>79</sup> and are therefore forced to follow the family’s choice.<sup>80</sup> During the course of the field research, it became apparent in addition that a range of “disabilities” were being cited as the basis for prohibiting applications for naturalisation. For example, it was suggested by one government official that if someone does not have all the fingers on his/her hand, then s/he is not eligible for naturalisation as they cannot have their fingerprints taken.<sup>81</sup>

A further concern that emerged relates to a fundamental misunderstanding in the context of language barriers: to a Tanzanian, the Burundian Kiswahili accent for “getting a naturalisation certificate” (*nakata uraia*) sounds almost identical to “I refuse (*nakataa*) naturalisation”. This difference in accent has generated considerable confusion and may, in part, explain why there were numerous complaints that those who had originally chosen naturalisation have subsequently found their names on the repatriation list, particularly problematic as current practice does not seem to permit change of mind.<sup>82</sup>

Completed application forms are signed by immigration officers. Those that cannot be completed for some reason are either held or returned to applicants. Although it is unclear whether return of applications is intended to constitute a rejection of a refugee's case, a number of refugees have interpreted it this way. Those who have not had their application for naturalisation accepted are asked to go to the repatriation desk, suggesting that there is no opportunity for appeal. Those who were out of the settlement – approximately 250 were registered in Ulyankulu as not present during the registration by the time of the fieldwork – remain unregistered for either option. Many of those who were not available for registration were students who have been living outside the settlement without a permit from the settlement

<sup>76</sup> Interview with refugee woman, Ulyankulu, 21 June 2008.

<sup>77</sup> Key informant interview, Ulyankulu, 17 June 2008.

<sup>78</sup> Interview with government official, Ulyankulu, 17 June 2008.

<sup>79</sup> Interview with UNHCR official, Ulyankulu, 18 June 2008.

<sup>80</sup> Although one of the thresholds for naturalisation under the Tanzania Citizenship Act No. 6 of 1995 is a requirement not to be of “unsound mind”, there is no reference to disability being a bar to consideration. Section 9 (1) of the Tanzanian Citizenship Act provides that that naturalisation can be considered for any person inter alia who is a “of full age, and capacity”. Section 3 (3) of the Act defines “full capacity” as “not of unsound mind”.

<sup>81</sup> Interview with government official Ulyankulu, 18 June 2008

<sup>82</sup> Interview with UNHCR official, Ulyankulu, 18 June 2008.

commander, although they had invitation letters from the government schools that they were attending.<sup>83</sup> The final outcome for these individuals is not known.

### ***Legal Concerns Arising from the Process***

The procedure adopted by this “naturalisation or repatriation” durable solution package that is being offered to this particular group of Burundian refugees raises a number of important legal questions surrounding what appears to be an exceptional procedure – in some cases even more accommodating – *vis a vis* Tanzanian refugee and citizenship law.

One of the most significant legal questions concerns the citizenship status of those who were born in Tanzania – approximately four fifths of this particular population. There is some suggestion that those who have been born in Tanzania may have in fact acquired, and been able to retain, Tanzanian citizenship by reason of their birth on the territory and therefore may not need to be subject to the current naturalisation procedure. There are conflicting authorities with respect to both law and practice surrounding this issue, however, and clarification is needed urgently. An initial attempt to scope the key legal questions is set out in an Annex to this report. At the same time, others in the group may not be Burundian citizens as defined by Burundi’s new 2000 Citizenship law, although as a matter of practice Burundi appears to be encouraging the return of all its “citizens”. While the matter is complex and involves consideration of both Burundian and Tanzanian law governing citizenship and refugee status and their interaction (including the impact on refugee status of any proactive move to assert or declare citizenship) there is a need for clearer initial assessment of the individual citizenship status of each refugee prior to his or her engagement in the current process.

Other concerns relate to the way in which the procedure is currently being carried out in practice.<sup>84</sup> Although it is recognised that the current procedure is an exceptional one, encompassing special arrangements for this particular refugee community with longstanding ties to Tanzania, the process still needs to parallel the substantive and procedural law governing naturalisation set out in the 1995 Citizenship Act. It is important to emphasise, however, that by the time this study was being conducted, decisions on granting or refusing of citizenship for the processed applications had not yet been made by the Minister – the “refusals” cited appear to relate more to the opportunity to be considered within the special scheme in the first place. However, this legal distinction does not reduce the confusion amongst refugees regarding the options and avenues of redress available to those not permitted to proceed with their naturalisation applications under the scheme. While it seems to be operating broadly along these lines, a number of troubling elements are emerging with respect to barriers encountered by some refugees in submitting an application, which appear to be outside the scope of the 1995 Act.

First, the research indicates that those who have a disability, however mild, may be prevented from making an application for naturalisation individually. In some narrow circumstances, possession of a disability could

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<sup>83</sup> Those students interviewed said that they had used the letter from the school as their official documentation as permits from the camp commandant are only valid for 14 days, and they did not want to keep returning in order to renew their permits. They said they were unaware that they could have extended their permits from the regional immigration office after expiration of the 14 day permit from the settlement commander.

<sup>84</sup> It is important to note that the majority of procedural concerns identified by the research do not appear to be formally sanctioned by regulations issued to govern the process but have emerged as a matter of practice and have been exacerbated by the sheer extent, nature and complexity of the process. Indeed it is understood that UNHCR has issued guidelines that have been aimed at rectifying a number of the problems identified. Communication with UNHCR official, 3 November 2008.

be interpreted as a basis for considering whether it might be difficult for the applicant to contribute to the “national economy” or “welfare”, but in the light of the broad discretion available to the Minister, and the inclusion of “welfare” in addition to “economy”, basing a refusal simply on the grounds of disability may be unlawful.

Second, concerns were raised with regard to situations in which families were divided in their preference for repatriation or naturalisation. Although the status, or potential status, of family members could be used as an indicator of the extent to which an individual intends to stay in Tanzania permanently, it certainly should not be determinative. Similarly, the exclusion from the procedure of those who were, or whose family members were, absent from the settlement on a particular date, also raises concerns. Of course while such individuals could make an application for naturalisation outside the scope of the current process, it is unlikely to be practical or feasible – particularly as those who have not been accepted for consideration under the special naturalisation process are being told they have no option but to repatriate. A related matter is the fact that minors are not being permitted to apply independently despite having an independent right to nationality, which is further complicated by the possibility that a number of them may in fact already have acquired Tanzanian citizenship (see discussion in the Annex).

A third aspect of the procedure that is troubling is the practice surrounding change of mind: those who had opted to repatriate when the initial registration was conducted are not being permitted to subsequently request consideration for naturalisation as part of the current programme. Again, as long as the threshold conditions in the Citizenship Act are fulfilled, it should be made clear to the refugees that there would seem to be no bar to them making an application for naturalisation under the Act outside of the current process – indeed, as noted above, many may indeed already be citizens. Although, once again, the practicalities of the process are likely to be prohibitive, at a minimum this option should be advised.

Related to this is the fact that refugees in the settlements are being given to understand that there is no avenue of appeal and that a refusal of access to the naturalisation procedure results in an automatic addition to the repatriation list. Although under the Citizenship Act the Minister need not provide any reason for refusing to grant any application for naturalisation,<sup>85</sup> in this instance, the need for an appeal against a refusal to enter the special naturalisation process is especially acute where such refusal appears to have such severe consequences in practice – in this case what may amount to *de facto* cessation of refugee status by automatic registration for repatriation.

Cessation, the mechanism in refugee law whereby refugee status is deemed withdrawn, is invoked in situations where the need for protection has objectively ceased or where a voluntary act of the refugee renders void the continuing need for protection. In Tanzanian and international law, among the grounds for cessation are situations where a person “has acquired a new nationality, and enjoys the protection of the country of his new nationality” and where a person “can no longer because the circumstances in connection with which he was recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality”.<sup>86</sup> Although group cessation can be declared, individuals must be given an opportunity to indicate why their status as refugees should not be revoked or why they may have a continuing need for protection.

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<sup>85</sup> Tanzanian Citizenship Act No 6 of 1995, section 23.

<sup>86</sup> Refugees Act, 1998, art. 4(3)(e)



Although cessation does not appear to have been declared for the group in this study *as a matter of law*, it does appear that a determination has been made – as a matter of policy and practice – that it is now time for refugee status to cease and for the group to seek the protection of either Burundi or Tanzania as citizens. It is vital, therefore, that a refusal of participation in the special naturalisation scheme should not amount to *de facto* cessation.<sup>87</sup> At a minimum, any decision on naturalisation, or direction to participate in a procedure (such as the current one), which has the effect of terminating refugee status, should not only be subject to review on the basis of a continuing fear of persecution,<sup>88</sup> but should take into account the proviso to the general rule: that if a refugee invokes “compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality”, that refugee should be heard and those reasons should be given due consideration.<sup>89</sup>

Fourth, the situation of Burundian refugees who have married Tanzanians was also raised in the research. The Tanzanian Citizenship Act indicates that Burundian women who marry Tanzanian men shall, at any time during the lifetime of their husbands, be entitled to be naturalised upon making an application “in the prescribed form”.<sup>90</sup> Thus Burundian women who have married Tanzanian men do not need to satisfy any of the qualification provisions for naturalisation – although they must submit an application. It would be expected that all such persons, if permitted to apply under the special scheme, should be successful. If for some reason they are not allowed to access the scheme, they should be advised of their right to recognition as a citizen by reason of their marriage under the procedures set out in the Tanzanian Act. Burundian men who marry Tanzanian women, however, do not appear to enjoy the same right – the statute is silent on their case.<sup>91</sup> In such cases, the rights of Tanzanian women to enjoy the company of their husbands and not be forced move to another state where their rights may be restricted may also need to be taken into account.

Finally, the restrictive context within which the option to naturalise is being presented may be forcing some in the group to act either fraudulently or against their own interest when engaging with the current process. Refugees are being told that there are only two choices: repatriate or naturalise. For those who want to return home eventually but do not feel that the time is yet appropriate, not least for security reasons, an application for naturalisation, which involves the establishment of an “intention to reside permanently in Tanzania” appears to be the only vehicle on offer. At the same time, those who engage with the procedure and “admit” that they would return to Burundi if they could do so safely in the future are, in practice, being refused naturalisation and ordered to repatriate. As noted above, any actual or constructive withdrawal of citizenship must protect the basic *jus cogens* right of refugees not to be refouled. The group therefore have a right to maintain refugee status if they neither wish to repatriate or take up the offer to apply for Tanzanian citizenship. This must be communicated to the refugees to allow them to make clear decisions

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<sup>87</sup> Section 21(2) of the Refugees Act recognises that decisions on the final status of refugees must be handled carefully. The Act provides that “in making an order which is likely to affect the life or status of a person claiming to be a refugee, the Minister or the competent authority shall have regard to Part III of Chapter 1 of the Constitution of the United Republic [the Bill of Rights], and the relevant International Conventions on refugees which stipulates on treatment of refugees.” It is suggested that the individual should be entitled to hear reasons, and perhaps be provided an opportunity to furnish additional information, if appropriate and relevant, with respect to any decision which has the effect of undermining his or her right to be protected as a refugee – such as, for example, automatic entry on a repatriation list. See Kamanga 2005.

<sup>88</sup> This should be done particularly by analogy with Section 9(7) of the Refugees Act: “Any person dissatisfied by the decision of the Minister recognising any person or group or category of persons as refugees or rescinding or withdrawing the refugee status under this section [on status determination] may petition for a review to the Minister within seven days from the day he is informed of such decision.” Refugees Act, 1998, art 9(7).

<sup>89</sup> Although strictly interpreted the UN Refugee Convention applies this provision only to those refugees seeking protection from events in Europe during World War II, principle and UNHCR policy guidelines indicate a general application.

<sup>90</sup> Tanzanian Citizenship Act No 6 of 1995, section 11(1).

<sup>91</sup> It is possible that a challenge to this provision as discriminatory and raising constitutional and human rights issues would be successful.

and prevent their being constrained to undermine the integrity of the naturalisation and repatriation procedure.<sup>92</sup>

### ***Self-Settled Refugees: Options for Durable Solutions?***

While those living in the settlements are caught up in the details and ramifications of the process itself, self-settled refugees are living in a somewhat different situation of uncertainty, unsure of whether or not they will be excluded from the current process because of their “ambiguous” status as self-settled refugees. Indeed, officials in the area talked of how it is hard to discern between refugees and illegal immigrants. As one government official said, “There are many individuals from Burundi, Rwanda and the DRC with residents permits and there are also illegal immigrants. They are more than the actual population of Kigoma region. Some of these have [somehow obtained] voting cards and they claim to be Tanzanian because they vote.”<sup>93</sup> Such lack of legal distinctiveness is cause for concern among the refugees in light of the possibility that the same process is extended to them – and that any successful application for naturalisation is likely to be based on their legitimacy as refugees in the first place.

While some have refugee identity cards that they were given by the Refugee department and UNHCR when they arrived, many of those who were born in Tanzania do not have any official form of refugee identity – although some may actually already be Tanzanian citizens (see discussion below in the Annex). As discussed above, some refugees have been identifying themselves as Tanzanians, using voting cards that were given in 1995 for the first time, or CCM membership cards (issued by *Chama Cha Mapinduzi*, the ruling party in Tanzania). As one young man said, “for us who are young, our permit is our birth card.”<sup>94</sup>

After decades of living in villages around Kigoma, therefore, refugees are suddenly being confronted with the reality that their future status hangs in the balance. Frequent reference was made to the fact that applying for citizenship, although prohibitively expensive, has always been a possibility, but to date has not been considered a priority. However, that has now changed: in the context of the current focus on ending displacement – including both the 1972 refugees who have opted for repatriation as well as those who fled in the 1990s and are also being “encouraged” to return – their previously acceptable status is now being questioned. As one man said, “I am worried because our friends in the settlement have started the process of naturalisation. But what about us? We are not illegal immigrants because we have the permits. It is like we are forgotten.”<sup>95</sup>

In summary, the current repatriation and naturalisation process, which represents a moment of profound change for refugees, is leading to considerable anxiety. In the case of refugees living in the settlements, it is clear that the lack of information and assistance in the process is making the situation worse. Refugees are making life-changing decisions in an extremely short period of time, with limited information both regarding the stability of Burundi and the reality of staying behind in Tanzania. For self-settled refugees, there is uncertainty regarding whether or not they are going to be included in the current process, particularly in light of the ambiguities surrounding their status in the country. Ultimately, refugees have been

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<sup>92</sup> It is, of course, open to the Tanzanian authorities to declare cessation for the group (indeed there is a suggestion that this may occur with respect to the residual population). There would be a need however to provide a channel for those subject to this general declaration to present reasons as to why they individually have a continuing need for protection.

<sup>93</sup> Interview with government official, Kigoma, 3 July 2008.

<sup>94</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 4 July 2008.

<sup>95</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 7 July 2008.

led to understand that once the official repatriation and naturalisation procedures are finished, there will no longer be an option to maintain the status quo – to retain their refugee status – adding to the anxiety accompanying the process.

## **BECOMING TANZANIAN OR RETURNING TO BURUNDI**

Refugees living in the settlements, therefore, believe that they are in a situation in which they have to make a choice – and an immediate choice – between returning to Burundi or staying in Tanzania. At the same time, self-settled refugees are considering what choice they will make should they be given the same option. This decision – which is being presented as a one-off choice between two national identities – is intended as a permanent solution to the decades of displacement and exile endured by this group of refugees, despite the complexities and implications of the various forms of belonging that characterise their lives. Refugees also alluded to the fact that short-term solutions will not necessarily generate genuine levels of inclusion and belonging that would enable them to feel secure about their futures. In the immediate term, not surprisingly, findings show that refugees are concerned about their ongoing access to livelihoods, as well as reducing the negative impact on their own or their children's education at this moment of change. Caught in something of a dilemma, they are wrestling with hard choices in a context in which they perceive no room for flexibility. Within this context, a number of dominant factors emerged relating to access to land, physical security, access to rights, and the discussion surrounding the government's proposed closure of the settlements, discussed in turn in the following section.

### ***Returning to Burundi: Access to Land***

The interviews suggest that a significant factor in people's decision-making is the issue of land ownership in Burundi, with "only those with land [opting] for repatriation."<sup>96</sup> Conversely, many referred to the fact that they do not have any land, or no longer know where their family's land is, and therefore feel unable to return. Thus while the Task Force report indicated that those who wanted to repatriate generally corresponded with those who had been born in Burundi, the findings of this study show that the decision has more to do with the expectation of being able to reclaim land on return to Burundi. As one young man who has buried both his parents in the settlement said, "I have to go back to find my parent's land."<sup>97</sup>

Many of those interviewed who have opted for repatriation talked of their confidence that they would have access to some land on return. However, the basis on which this assumption rested was not clear. Some mentioned that they believed that the government of Burundi would assist them in providing land, which was underscored by promises made during the visit from Burundi government officials. As one refugee said, "I do not have a farm [in Burundi], but some big people came here from Burundi to tell us that we will be given farms when we go back."<sup>98</sup> Another man said, "My father came here in 1972 and died here. I do not know my father's farm... I think the government [of Burundi] will help us by giving us land."<sup>99</sup> Others, such as the young man above, referred to family land that they hoped to reclaim on return.

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<sup>96</sup> Interview with refugee man, Ulyankulu, 18 June 2008.

<sup>97</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>98</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>99</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

However, a number of studies indicate that, for this group of refugees, (re)claiming land after almost four decades of absence is going to be a highly contentious process.<sup>100</sup> Mbazumutima points to the fact that refugees specifically want to return to their original land, not a new piece of land allocated by the government of Burundi.<sup>101</sup> This desire is not surprising in a context in which those who are returning have been away from their homeland for over three decades – and some have never been to Burundi – and in which the physical claim to land is fundamental to notions of belonging and (re)integration in Burundi. Expectations with regard to (re)claiming land in Burundi were consequently set against concerns regarding the current sustainability of peace in Burundi. While a discussion on the implications of reclaiming land in Burundi go beyond the scope of this paper, suffice it to say that the equitable treatment of returning populations arriving into a potentially volatile situation is likely to be critical to the long-term stability of Burundi, as well as to the durability of this particular solution to displacement.

### ***Staying in Tanzania: Physical Security***

Another key factor in decision-making was the issue of physical security. For many of those who have opted for naturalisation, the desire to stay in Tanzania was simply linked to the fact that it is seen as a peaceful place. Many referred to it as a place where different ethnic groups can co-exist peacefully. As one refugee said, “I have seen that here a person is a person. There is peace and we like it. The issues of Burundi are above our power. The discrimination on the basis of tribe or colour is inhumanity.”<sup>102</sup> Furthermore, many talked of how, despite the fact that there is a Hutu leader, power still rests with the Tutsi because they remain the majority in key positions including the army.<sup>103</sup> There is an implicit contrast in these statements to the situation in Burundi, which has been haunted by divisions along ethnic lines. Indeed, the security of living in Tanzania was seen in sharp contrast to the levels of violence that have taken place in Burundi over the past decades. As one man said, “Tanzania has a good democracy. I have not heard of anybody who was killed carelessly.”<sup>104</sup> Likewise an elderly man said, “What is good about Tanzania is good governance. There can be nothing good in a warlike country like Burundi.”<sup>105</sup> In other words, there was recognition of the extent to which good governance shapes and influences positive notions of citizenship.

For some, the memory of the violence they fled – whether directly or through stories that have been told – is reason enough not to return. Several interviewees talked of how they could still remember the trauma of events in Burundi, and said that this was why they did not want to return. One woman described being attacked and witnessing atrocities being committed. She has opted for naturalisation because she does not

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<sup>100</sup> The Joint Commission for Refugees of the Burundi and Tanzania Episcopal Conference, for instance, questions the status of the 1972 Burundians to land as “[u]nder Burundian law, legal claim to land abandoned expires after thirty years.” Joint Commission for Refugees of the Burundi and Tanzania Episcopal Conference, 2008. “The Presence of the Burundi Refugees in Western Tanzania: Ethical Responsibilities as a Framework for Advocacy.” (In David Hollenbach (ed.), *Refugee Rights: Ethics, Advocacy, and Africa*. Georgetown University Press: Washington D.C.) p. 62. Further, although a new regional agreement dealing with the issue of the property of returning populations has recently entered into force in Burundi, the Protocol on the Property Rights of Returning Persons, Pact on Security, Stability and Development in the Great Lakes Region, it is expected to be quite a while before the burgeoning systems of dispute resolution around land issues are working effectively.

<sup>101</sup> Mbazumutima 2007, p. 74.

<sup>102</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 5 July 2008.

<sup>103</sup> It is interesting to note that Sommers, in his research with urban refugees in Dar es Salaam, indicates that while elite refugees viewed elections as a critical factor, working class refugees focused on the composition of the army and felt that an apparent democratic transition without integration of Hutu into the army would increase the likelihood of violence. (Sommers 2001.)

<sup>104</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 4 July 2008.

<sup>105</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 5 July 2008.

want to return and be forced to remember.<sup>106</sup> Another woman talked of how her sister had told her about the way in which her father had been killed, stating, “I am not ready to go and face the same.”<sup>107</sup>

Among the refugees, there were also specific concerns that their return might fuel conflict. As one refugee said, “[d]o not be surprised if a new war will start in Burundi because of those who are returning.”<sup>108</sup> Indeed, numerous interviewees referred to stories that are filtering back of problems facing those who have returned, particularly over the reclaiming of land. Obstacles to access to land in Burundi and its potential linkages with actual or future conflict were a key factor for refugees who had decided to opt for naturalisation. As one woman said, “[a]ccess to land is the biggest obstacle for those who go back, but also security related to land, as those owning land now might kill those who are returning for fear that they might go and claim their land back.”<sup>109</sup> The return of refugees has the potential to bring up unresolved issues. As another refugee said, “[i]t is not easy to get a permanent peace in Burundi. We ran in 1972 and since then they forgot about us. But now they will remember when people are going back and the past mistakes have not been corrected.”<sup>110</sup>

More broadly, ongoing instability in Burundi was causing considerable anxiety for those who have opted for repatriation. Many spoke of how they had chosen repatriation on the basis of the hope of sustainable peace in Burundi, but their intention was not to return until the country had reached such a point. As one refugee said, “you know, someone who is forgetting his home is a slave. You see even the sign there [pointing to the unit offices], it says ‘home is home’. But now I am not so sure because I have heard that there is more confusion there again.”<sup>111</sup> The source of this uncertainty was explained in an interview with a key informant: in the original intention survey refugees were asked, if peace were obtained in Burundi would you go back? If they said yes, then the individual was registered for repatriation and expected to return by August 2008.<sup>112</sup> Now that they have realised the imminence of the intended repatriation exercise, it has led to concern among many of the refugees interviewed. As one man said, “I hear that they are fighting again [in Burundi]. If it was possible to change to naturalisation I would give up my repatriation completely than to be welcomed by war. My children were born here and they are used to peace. If anything happens they will say our father has brought us to be slaughtered. But I cannot change.”<sup>113</sup>

However, with the current process clearly weighted in favour of repatriation, refugees are under pressure to return imminently, indicating that the agenda for repatriation is being driven by factors other than the security of refugees.<sup>114</sup> As a recent International Crisis Group report stated, “Burundi is going through a dangerous political crisis which could compromise the holding of free and fair elections in 2010 and the country’s future stability.”<sup>115</sup> Thus while many might have indicated that they would like to repatriate to Burundi *should the situation reach a point of sustainable peace*, there is considerable apprehension about whether or not this has been achieved.

<sup>106</sup> Interview with refugee woman, Ulyankulu, 22 June 2008.

<sup>107</sup> Interview with refugee woman, Ulyankulu, 24 June 2008.

<sup>108</sup> Interview with refugee man, Ulyankulu, 21 June 2008.

<sup>109</sup> Key informant interview, Ulyankulu, 17 June 2008.

<sup>110</sup> Interview with refugee man, Ulyankulu, 25 June 2008.

<sup>111</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>112</sup> Key informant interview, Ulyankulu, 18 June 2008.

<sup>113</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>114</sup> There is nothing new in this. Barbara Harrell Bond, writing in 1989, for instance, highlights the extent to which agendas other than the best interests of refugees too often dictate repatriation, which is widely seen by policy and decision makers as the most favourable outcome. (B. Harrell Bond, 1989, “Repatriation: Under What Conditions Is It the Most Desirable Solution for Refugees? An Agenda for Research.” *African Studies Review*, 32(1): 41-69, April.) These opinions are reiterated by Chimni, 1999.

<sup>115</sup> International Crisis Group, “Burundi: Restarting Political Dialogue.” Africa Briefing no. 53, 19 August 2008.

## ***Gaining Tanzanian Citizenship***

In addition to issues of physical security, for those who have opted for naturalisation, receiving Tanzanian citizenship is seen as a means of shedding their refugee identity and its associated restrictions, and having access to the same rights as any citizen of the country. As one refugee said, “the only difference between us and Tanzanians is that I am called a refugee, a person without power.”<sup>116</sup> Another refugee said this: “I always introduce myself as a Murundi [a person from Burundi], but when I become a citizen I will not introduce myself like that.”<sup>117</sup> Tanzanian citizenship was seen as a means of gaining access to rights that were currently denied to refugees. One key preoccupation was the right to vote: “[a]s a refugee I am unable to discuss issues of the country and give my opinion. I do not have that freedom... It is so painful to live for a long time as a refugee.”<sup>118</sup> Another concern was freedom of movement, which is denied to refugees: “Once I am Tanzanian I will have freedom to move and go anywhere I want.”<sup>119</sup> It was also seen as means of legitimising access to education, healthcare and land. “My main task is to get the citizenship so that I can continue with my studies,” said one student.<sup>120</sup> In other words, gaining citizenship is seen as critical to being able to fully access their rights.

These understandings of Tanzanian citizenship were echoed by self-settled refugees. Although there is greater integration of this population, as demonstrated above, it is hard to legalise or formalise relationships of equality with the local population. As one self-settled woman said, “I am called a refugee. To remove that name is very difficult. I want to become a citizen.”<sup>121</sup> Or as a Tanzanian man said, “[a]s human beings we are all equal, except that they [the refugees] have a tendency of feeling that they are ‘guests’ because they are not citizens. They are still struggling with their status. The government should allow them to have that.”<sup>122</sup> The overwhelming majority of self-settled refugees interviewed, therefore, said that they want to receive citizenship simply so that they can legitimately stay in Tanzania, effectively securing their future. There was recognition that being granted citizenship would give them an increased stake in the area and, in turn, ensure a reciprocal relationship with the state. As another Tanzanian man said, “sometimes when a leader wants something to be done, it is not heard because they are not Tanzanians. Or Burundians will do it with doubt, thinking that they are being used. So they are not very active in development because of that.”<sup>123</sup> This sentiment was reiterated by a refugee who stated, “we are requesting for naturalisation so that we can participate fully in development activities.”<sup>124</sup>

Whether or not receiving Tanzanian nationality will automatically lead to total integration remains to be seen – indeed, current stigma associated with the label “refugee” is unlikely to automatically disappear when their legal status is changed. The fact that those who have opted for naturalisation are so concerned about the possibility of having to relocate to others areas in Tanzania, as discussed below, shows the extent to which there are concerns that they will continue to be labelled as refugees, despite their new legal

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<sup>116</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>117</sup> Interview with refugee man, Ulyankulu, 22 June 2008.

<sup>118</sup> Interview with refugee man, Ulyankulu, 21 June 2008.

<sup>119</sup> Interview with refugee woman, Ulyankulu, 21 June 2008.

<sup>120</sup> Interview with refugee man, Ulyankulu, 21 June 2008.

<sup>121</sup> Interview with self-settled refugee woman, Rusaba B, Kigoma, 5 July 2008.

<sup>122</sup> Interview with Tanzanian man, Rusaba B, 9 July 2008.

<sup>123</sup> Interview with Tanzanian man, Rusaba B, 9 July 2008.

<sup>124</sup> Interview with self-settled refugee man, 9 July 2008.

status. At the same time, regardless of potential ongoing issues of social stigma, there was clear recognition that citizenship provides the possibility of a permanent national identity that signifies access to numerous other rights – which, in turn, generates the possibility for greater integration.

### ***Losing Burundian Citizenship***<sup>125</sup>

Refugees are obliged to renounce their Burundian citizenship in order to comply with Tanzanian law on acquiring Tanzanian citizenship. When asked about how they felt about this, the majority of those seeking naturalisation initially referred to the fact that they have either never known Burundi, or have not been there for a long time. As one woman said, when asked how she would feel about losing her Burundian citizenship, “I have already left the Burundian citizenship and my children do not know Burundi.”<sup>126</sup> In particular, younger interviewees reflected that Burundi meant nothing to them. One young man said, “I am ready to lose my Burundian citizenship. I don’t know anything about it. I am only Burundian because my parents are Burundians.”<sup>127</sup>

This sentiment was echoed in interviews with self-settled refugees. As one woman said, “those who are born here do not want to hear about Burundi... I do not even know if I am a Burundi citizen while I am here.”<sup>128</sup> Likewise when asked whether he would consider returning to Burundi, one man replied: “I choose to stay here because I was born here and I have a farm here. I feel that I am a Tanzanian. My father is a Burundian, but I was born here.”<sup>129</sup>

However, while many interviewees talked of the fact that their Burundian nationality is effectively meaningless to them, they also hinted at the fact that the situation was more ambiguous, despite the fact that those who have opted for naturalisation were understandably guarded in how they talked about notions of Burundian identity. This ambiguity resonates with previous research carried out by Sommers in his work with urban refugees in Dar es Salaam. He emphasises the extent to which refugees who fled in 1972 expressed some regret at the prospect of “cutting” their ties with Burundi during a previous naturalisation effort carried out in the early 1990s. Trapped between two identities – a formal Burundian national identity with few practical benefits attached and a Tanzanian identity that would carry practical benefits – most would chose Tanzanian nationality, but not without some sense of loss. As one of the refugees he quotes says, “I came from Burundi, and I am Burundian. But I don’t understand Burundi. I came as a baby [in 1972]. I’ve never returned. I am not a Tanzanian, but I only know Tanzania.”<sup>130</sup> This dilemma is echoed by Mbazumutima who emphasises the strong ties that refugees in the settlements have with their homeland, Burundi.<sup>131</sup> It is not surprising, therefore, that in apparent contradiction, many – often within the same interview – both favoured naturalisation and hinted at the fact that they would consider returning to Burundi one day should conditions improve. With security in Burundi in a state of flux, and with the offer of remaining in Tanzania as citizens, it is not surprising that the majority have opted to apply for citizenship. Yet the fact that this is automatically accompanied by a loss of Burundian citizenship is causing some disquiet.

<sup>125</sup> As discussed in the Annex, some in the group may, in fact, not possess de jure Burundian citizenship.

<sup>126</sup> Interview with self-settled refugee woman, Rusaba B, Kigoma, 5 July 2008.

<sup>127</sup> Interview with refugee man, Ulyankulu, 19<sup>th</sup> June 2008.

<sup>128</sup> Interview with self-settled refugee woman, Rusaba B, Kigoma, 7 July 2008.

<sup>129</sup> Interview with self-settled refugee man, Rusaba B, Kigoma, 7 July 2008.

<sup>130</sup> Sommers 2001, p. 4 – 5.

<sup>131</sup> Mbazumutima 2007.

One possible way of accommodating the refugee dilemma and building greater flexibility and fluidity into the process – the absence of which is creating such confusion and frustration – would be to allow for dual nationality. However, dual citizenship is not permitted in Tanzanian law (although it is, in certain circumstances, in Burundi) and the discussion surrounding this issue is politically charged. The debate over issues of citizenship in Tanzania, which initially took the name of “uzawa” (indigenisation), was meant to ensure that indigenous Tanzanians are empowered to be able to invest in government enterprises following the privatisation process. It culminated in the revoking of the citizenship of four individuals who had been recognised as Tanzanians and had held high posts in the government. Ultimately, however, the Tanzania ruling party banned the use of the word “uzawa” saying that it was against the constitution of the party to discriminate against anybody on the basis of race, gender etc.

In 2007, the academic debate resumed, marked by an international conference entitled “Unbinding Dual Citizenship in Tanzania” that was organised by the Institute of Development Studies, University of Dar es Salaam. Some participants in the conference raised concerns regarding the implications of dual citizenship on account of the number of refugees that Tanzania was hosting, while others argued that extending dual citizenship might perhaps help Tanzania to access investment from the diaspora. In addition, there was recognition of the existence of an emerging elite with children born outside Tanzania who could benefit from accessing both nationalities.<sup>132</sup>

During the course of the research interviews showed that concerns about divided loyalties were driving some of the reluctance to acknowledge and permit dual citizenship. One government official, for example, cited the example of Rwandan refugees who had fled in 1959, were given citizenship in Tanzania, but then renounced it in 1994 and returned to Rwanda. This demonstration of split allegiance is viewed as unacceptable.<sup>133</sup> By contrast, the naturalisation of a group of Somali refugees who fled to Tanzania in early 1990s, but apparently who had been originally trafficked as slaves from the Tanga region over 200 years ago, had received more positive press. The argument for their successful integration into Tanzania was based on the fact that they still speak the same language, Zigua, as those in Tanga, and have some kind of “first to the land” legitimacy in their claim for citizenship,<sup>134</sup> evoking notions of autochthony or “indigeneness”. It also suggests that linguistic similarity and ethnic affiliation may be viewed as more important than time spent in Tanzania as grounds for accepting the acquisition of citizenship.

Within this context, therefore, there is both ambivalence and contention among the refugee community about national identification, and what it is seen to symbolise. One man who has opted for *naturalisation* said, “I understand nationalism because I have been to school. So far, home is home. Beat me, kill me, or roll me over, but I know that the real citizenship is the Burundian one.”<sup>135</sup> As his statement indicates, “real” citizenship in this case includes social identity as well as legal status. Likewise a man who has opted for naturalisation asked, “will they accept if I want to change after naturalisation? Because I think when I get old I might leave.”<sup>136</sup>

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<sup>132</sup> See also R. Nagar, 1996. “The South Asia Diaspora in Tanzania: A History Retold.” *Comparative Studies of South Asia, Africa and the Middle East. A Journal of Politics Culture, Economy*, Vol. 16 No. 2; and R. Aminzade, 2003. “From Race to Citizenship: The Indigenisation Debate in Post-Socialist Tanzania.” *Studies in Comparative International development (SCID)*. Vol. 38 No. 1 43-92.

<sup>133</sup> Interview with government official, Dar es Salaam, 15 April 2008.

<sup>134</sup> Interview with UNHCR officials, Dar es Salaam, 16 April 2008. It was also mentioned in an interview with government official, Dar es Salaam, 15 April 2008.

<sup>135</sup> Meeting between UNHCR officials and village leaders, Ulyankulu, 26 June 2008.

<sup>136</sup> Interview with refugee man, Ulyankulu, 19 June 2008.



Not surprisingly, a number of refugees referred to the fact that if Burundi reaches a point of durable peace, many will return and reclaim their Burundian citizenship.<sup>137</sup> As one of the refugee village leaders said, “people are forced to ask for naturalisation [due to the situation in Burundi] but their hearts are confronting them and if they are given at least one year they will be going back to Burundi.”<sup>138</sup> This was echoed in other similar comments from refugees: “You know most people have chosen naturalisation so that they are waiting to see if peace will be obtained, because they know the citizenship in Tanzania is the *lips* citizenship.”<sup>139</sup>; “I believe those registered for nationalisation will continue to be refugees. *Uraia wa kweli ni wa Burundi*. [The true citizenship is that one of Burundi only.]”<sup>140</sup> These statements show the extent to which interviewees recognise the usefulness of various identities and are seeking to keep their options open for as long as possible. However, this desire to maintain the possibility of multiple – or at least dual – national identities is bound to conflict with the current Tanzanian political and legislative climate which is premised on forcing a choice between *either* Tanzanian nationality *or* Burundian nationality.

### ***Wanting to Stay***

This apparent ambiguity in people’s responses regarding the permanence of citizenship in Tanzania is further illuminated through discussions surrounding the threatened closure of the settlements and relocation of the refugees once they have received citizenship. Repeatedly in the interviews, refugees expressed concern over the pending closure of the settlements, which was not made clear to them during the initial intention survey when they made their choice between applying for naturalisation or repatriation. A considerable number who had originally opted for naturalisation said that they had subsequently changed their minds and are now planning to repatriate. Indeed, by the time the research team left the settlement, the number of those opting for repatriation had increased from the original number of 4,000 to about 10,000, a trend that is expected to continue since the processing of naturalisation applications was complete in only one village.<sup>141</sup>

This change suggests that the decision to naturalise was premised on refugees being able to remain where they are currently living,<sup>142</sup> and the suggestion that they will be asked to relocate has caused anger and uncertainty amongst refugees. Comments such as, “[w]e do not want to be refugees twice”<sup>143</sup>; and “relocation will be a problem because it is like going to a new country,”<sup>144</sup> were common throughout

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<sup>137</sup> Burundian law does provide for certain categories of citizens who revoke their nationality to later reclaim it. Under Art. 21 of the current law on nationality “[a]ny Burundian, to whom the law confers this status as a native, is entitled to hold dual nationality.” Indeed, “such a person who loses nationality by acquiring a foreign citizenship may regain Burundian citizenship, if he so applies for it, and keep his or her second nationality.” See *Loi No 1/013 du 18 juillet 2000 portant réforme du code de la nationalité*, Art. 22. IRRRI translation.

<sup>138</sup> Meeting between UNHCR officials and village leaders, Ulyankulu, 26 June 2008.

<sup>139</sup> “Lip” refers to something that is only of words but not of action, i.e. Tanzanian citizenship is viewed as formal and not “real”. Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>140</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

<sup>141</sup> Although it is yet not known how many applications will be rejected by the Minister, cases included in this figure are mainly as a result of people changing their minds from the two villages whose applications have been processed. If this same trend continues, this number is likely to rise when the process is complete.

<sup>142</sup> It is interesting to note, however, that in the original “intention” survey in June, 72% apparently indicated that they *would* want to move elsewhere in Tanzania. However, it is unclear whether this question was answered with respect to freedom of movement more generally, or moving home more specifically. See SA3 Ltd, 2007.

<sup>143</sup> Meeting between UNHCR officials and village leaders, Ulyankulu, 26 June 2008.

<sup>144</sup> Interview with refugee man, Ulyankulu, 19 June 2008.

interviews with those who have opted for naturalisation. The lack of information about the potential relocation was seen as a particular source of frustration, with many expressing anger over the fact that they were not told about this plan until after they had opted for naturalisation.<sup>145</sup> Some have apparently already moved away from the settlement because they do not want to be relocated,<sup>146</sup> and many are feeling confused about the prospect of moving elsewhere in Tanzania. As one refugee asked, “How are we going to move there? Is it hot? Will our kids go to school? What about our graves, our permanent houses, our businesses?”<sup>147</sup> This uncertainty has meant that many have not planted crops for this year, and unless alternatives are found quickly there are likely to be food shortages in the camp.

Thus, although the refugees who have opted for naturalisation claimed to have a sense of belonging to Tanzania, it is clear that this was, to some extent, localised. Fears around relocation were in many cases specifically linked to concerns that Tanzanians in other areas might not accept them. As one refugee said, “[i]f you move, the people of the places where we are going will ask where are we coming from? If you say Ulyankulu they will know that we are refugees and this is not a durable solution.”<sup>148</sup> In other words, there was a strong expectation that, despite their newly acquired Tanzanian citizenship, they would still socially and culturally be treated as refugees in their new location, undermining the value of their legal status. There was consensus that any relocation needed to happen slowly and naturally, and should be a process driven by the former refugees themselves.

There was also recognition of the inherent hypocrisy in this anticipated sudden relocation. As one man asked, “[i]f I have lived here for 36 years and was told to build a permanent house, schools, without the government’s hand, why should I move now?”<sup>149</sup> “They have not allowed us to move around all this time and now they are forcing us”, stated another refugee.<sup>150</sup> Indeed, although the official reason given for closing the settlements is that the land will be returned to national park, refugees believe that the relocation is being done primarily because of security concerns.<sup>151</sup> There is suspicion on both sides, on the part of the Tanzanian authorities that the continued presence of a block of people with questionable allegiance may pose a threat and, on the refugee side, that once they have left Tanzanians in the surrounding area will move in and settle on the highly developed settlement land.<sup>152</sup>

Having invested heavily in an area that has been their home for over three decades, it is hardly surprising that refugees are reluctant to move, quite apart from the extraordinary waste of infrastructure and resources if the settlements are to be demolished. As one respondent said, most people want “to stay here” – here referring to right here. In other words, they want to opt for the solution that allows them to maintain their current lives, but with greater assurance and legitimacy. Specifically, a number of refugees recognised the extent to which forced relocation would violate their newly acquired Tanzanian citizenship, arguing that if other Tanzanians were going to be allowed to move onto land vacated by the refugees (a scenario that is not yet clear) then this would demonstrate that there were different categories of citizenship. “I do not

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<sup>145</sup> Key informant interview, Tabora, 16 June 2008.

<sup>146</sup> Key informant interview, Tabora, 16 June 2008.

<sup>147</sup> Meeting between UNHCR officials and village leaders, Ulyankulu, 26 June 2008.

<sup>148</sup> Interview with refugee man, Ulyankulu, 24 June 2008.

<sup>149</sup> Interview with refugee man, Ulyankulu, 24 June 2008.

<sup>150</sup> Interview with refugee man, Ulyankulu, 21 June 2008.

<sup>151</sup> Key informant interview, Tabora, 16 June 2008.

<sup>152</sup> Key informant interview, Tabora, 16 June 2008.

understand how they can do this because when you are citizens you are allowed to live wherever you want. If I am moved I will become a refugee again.”<sup>153</sup> Of course there are circumstances under which governments can forcibly displace citizens, but they are typically narrowly circumscribed under national law and need to be carefully approached.

The fear of being forcibly moved outside the settlement – which, after all, has symbolised restriction and “otherness” for those living within its borders – is a critical issue that must be considered in assessing how to improve the prospects for integration of these new citizens. The findings clearly show that despite the length of time spent in the settlements, “local integration”, which moving the refugees to the settlements in the first place was supposed to facilitate, has failed, primarily as a result of restrictions placed on the refugees. In other words, the concepts of local integration and local settlement have tended to contradict rather than compliment each other. It is not surprising, therefore, that refugees are questioning the authenticity of the current naturalisation process with regard to its potential for genuine integration and equal access to rights. As Mbazumutima states, the “myth” of local integration has actually had an overall negative impact on refugees’ quality of life. Indeed, he talks of how refugees in Ulyankulu view their treatment as “resident guests” rather than “refugees” as a disadvantage, with the second wave of refugees getting more benefits as a result of being “full” refugees. “Thus refugees in Ulyankulu view the ‘malicious’ invitation by the Tanzanian government to feel at home, only as a way to rob them of advantages that other refugees enjoy.”<sup>154</sup> Furthermore, this notion of being treated as inferior is particularly poignant among this group of refugees given the fact that, as Mbazumutima says, “[b]eing a refugee in Tanzania was reminiscent of being a Hutu in Burundi.”<sup>155</sup>

Despite the “preferential” treatment they received from the government in being given land in the settlements, therefore, the overall perception of the refugees is that they have been treated unfairly – both in contrast to levels of assistance received by other refugees, as well as to the rights that are enjoyed by Tanzanian citizens and from which they have been excluded. The context in which refugees fear being treated, once again, as second class citizens is therefore critical to the potential integration of this group of refugees. Although the government has indicated that it plans to conduct an education campaign among government leaders at a district and regional level in areas “where refugees will be relocated”, emphasising the need “for locals to co-operate fully in implementing the exercise”, such education is hardly going to assure integration.<sup>156</sup> After 36 years of simultaneous marginalisation and the creation of new ties of belonging in Burundi, genuine integration will need to be built on something far more substantial, in particular on an acknowledgement of the apprehensions and hopes of these new citizens. How the process by which refugees may be asked to move to live in new areas of Tanzania is critical in that regard.

For those refugees who have chosen the option to seek naturalisation, the level of antagonism displayed towards the possibility of having to move shows the extent to which gaining Tanzanian citizenship signifies achieving the legitimacy to stay where they are but without the current movement restrictions imposed by the settlement structure: in sum, they see Tanzanian citizenship as a way of ensuring ongoing access to their current livelihoods which have built up over a period of almost four decades. By no longer being labelled refugees, they would have the knowledge and security that they have a right to be in their homes

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<sup>153</sup> Interview with refugee man, Ulyankulu, 21 June 2008.

<sup>154</sup> Mbazumutima 2007, p. 71.

<sup>155</sup> Mbazumutima 2007, p. 60.

<sup>156</sup> Communication with government official, Dar es Salaam, 22 October 2008.

into the indefinite future, as well as the right to move away from the original settlement land when and if they feel ready to do so. In a context in which the majority of refugees are subsistence farmers, this sense of security is centred on securing uninterrupted access to land and, therefore, to livelihoods. It also means the potential to break with a past that has been characterised by exclusion both within Burundi and Tanzania.

## CONCLUSION

The process that has been designed to end displacement for this particular group of refugees is positive in as much as it presents strategies for replacing refugee status with identities that, in theory, should allow for fuller access to rights and resources. It represents a unique opportunity for refugees to genuinely choose between naturalisation and repatriation, a choice not often afforded to refugees in the region. Refugees, however, while unequivocal in their desire to shed their refugee identity are already apprehensive about the extent to which either of these choices will allow for full access to rights and, most crucially, the ability to secure their livelihoods. This apprehension has been legitimated by the reports they have heard of difficulties in accessing land, compensation and security in Burundi, and the news of a planned relocation of those who take up citizenship on the Tanzanian side. In this context of both current and prospective uncertainties, having to make an immediate choice premised on permanence is forcing refugees into a corner.

For governments and policy makers, the ambivalence of refugees who are refusing the unique opportunity to gain Tanzanian citizenship on the basis of having to move from the settlement, or who are talking about the possibility of returning to Burundi in the future, is unacceptable and difficult to understand. Policy makers premise Tanzanian citizenship as both a permanent and exclusive national identity and a "solution" that should end any concerns about the availability of protection. However, from the perspective of the refugees themselves, there is little evidence that either will be a panacea, fully addressing all rights, security and livelihoods issues. The exclusivity of the two options and the timeframe within which the process is being implemented are causing additional stress in this regard.

This confusion is being exacerbated by the lack of information available to refugees, as well as the numerous problematic procedural issues discussed in the report. Many of those interviewed complained that they had received minimal information regarding both the situation in Burundi and the implications of receiving Tanzanian citizenship before having to make their choice. The inflexibility of the process, which fails to address changing circumstances, threatens to jeopardise the success of this unique effort. After all, little is achieved if refugees are repatriated to Burundi only to flee again due to land disputes or a return to conflict in the country. Likewise the prospect for those who have opted for naturalisation of having to suddenly move elsewhere in Tanzania, with limited knowledge of new areas and no family or community structures to assist them to settle, is daunting at best, and could seriously jeopardise their protection at worst. While over time many may move to other parts of the country, a sudden mass-relocation is clearly not in the best interest of the refugees or, indeed, the country. Having lived physically and socially isolated from mainstream Tanzanian society for over 35 years, integration needs to be acknowledged as a process that happens gradually rather than a one-off event.

Ultimately, for the majority of those interviewed, therefore, the possibility of staying in Tanzania as legitimate citizens but retaining the potential to return to Burundi should circumstances change substantially, is the optimal outcome – and one that does not seem unreasonable for a group of refugees

who have spent almost four decades living in exile and uncertainty. As such, the process by which refugees move within Tanzania, stay where they are, or return to Burundi needs to be a process that allows for the multiple factors and dynamics that could lead refugees to make wise choices for themselves and their families. Yet, as with many governments around the world, the option of dual or even multiple national identities is seen to somehow undermine their understanding of citizenship: having more than one national identity is seen to resonate with split and therefore questionable allegiance in a context in which exclusive notions of sovereign allegiance/national identity are demanded. Yet in reality, the findings show that the refugees' future allegiance is unlikely to be founded upon such ephemeral concepts: ultimately, they will base their confidence in a system that is able to deliver them their rights, the foundation on which the reciprocal nature of genuine citizenship is likely to rest.

The findings, therefore, point to the constraints in the way in which Tanzanian citizenship is conceived, in particular the denial of the possibility to hold dual citizenship, which is fundamental to the dilemmas facing refugees. Indeed, many of those interviewed question the very concept of citizenship as it was applied in its inflexible and exclusively either/or configuration within the process. To them, the categorical way in which it is being interpreted in the process does not reflect the complex realities upon which notions of belonging and inclusion are built by their communities. Refugees recognise, for example, that the layers of identity that they have accumulated not only stem from local and cross border notions of belonging, but also from the new regional political configurations: as one woman said: “[w]e are also going towards the East African community where probably the country’s citizenship will lose its meaning.”<sup>157</sup> Another refugee suggested that the optimal way for him to achieve the security and belonging he sought would be to return to Burundi, reassert his original citizenship, but then come back to live in Tanzania as an “immigrant”. These comments of course prefigure the important new layer of belonging and movement and establishment rights that are shortly to become a reality for citizens of the five states of the East African Community – and will change the way refugee status may be accessed and enjoyed in the future.<sup>158</sup>

This resistance to a singular, fixed identity challenges the practice of state-centric approaches to belonging and citizenship in a context where offering exclusive and absolute loyalty to an individual state may no longer make sense, and where multiple identities and allegiances have been forged, often by necessity, in exclusion and exile. The findings also point to the potential benefits of re-framing the basis on which these individuals were assigned and continue to be treated as refugees, a practice that takes little cognisance of localised or regional identities. While refugee status in its original conception is intended to provide immediate protection to those in urgent need, and is not configured as a permanent status, its application in practice has been to promote the reverse. The ascription of what became a persistent refugee status to this group of refugees – with all the ensuing restrictions on integration – has only served to limit their potential.

Furthermore, the focus on this group as “refugees” – and, therefore, on potential solutions being sought primarily within the humanitarian paradigm – has obscured the fact that many within the group may indeed already be Tanzanian citizens by virtue of their birth on Tanzanian territory. During the period that they have been in exile, new thinking on citizenship has driven reform of nationality law in Africa, and Tanzania has been at the forefront of a more progressive approach. The possibility that many within the case study group may, in fact, be Tanzanian citizens poses significant questions both for the conduct of the current

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<sup>157</sup> Interview with refugee woman, Ulyankulu, 24 June 2008.

<sup>158</sup> The five states of the EAC are Burundi, Kenya, Rwanda, Tanzania and Uganda. Chapter 17 of the EAC Treaty is entitled the “Free Movement of Persons, Labour, Services, Right of Establishment and Residence”. Article 104 provides that the partner states will adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the Community.

naturalisation process and for the politics of how citizenship and belonging is understood and conceived both within Tanzania and within the wider refugee assistance structures. The divide, therefore, between the lived reality of displacement and belonging for those forced to flee, and the overlapping legal, human rights and humanitarian mechanisms that exist to regulate their rights and aspirations, must be further explored. Indeed, without a framework that functions effectively at a grassroots level, individuals will be left unprotected. As the findings have shown, refugees will continue to challenge notions of citizenship as they are currently configured, showing the need for an approach to belonging and citizenship that both makes sense of, and can be used to improve, the day to day lives of displaced people across the region.

## ANNEX

### SOME REFLECTIONS ON THE CITIZENSHIP STATUS OF THE STUDY GROUP

The law on acquisition and loss of Tanzanian citizenship is governed by the Tanzanian Citizenship Act No 6 of 1995. Section 4 (2) of the statute would appear to indicate that those born on the territory of Tanzania after the 26<sup>th</sup> April 1964 are citizens of Tanzania from birth.<sup>159</sup> No other residency or status requirements or exceptions for refugees seem to be contemplated, unless they have been included in unpublished regulations enacted pursuant to the statute. Neither is registration nor other notice requirements stipulated; citizenship would appear to vest automatically in those born on the territory.<sup>160</sup> Although a number of secondary sources confirm this interpretation of the statute, it does not appear that this has been the approach taken in practice. It is important that further clarity be received from Tanzanian experts on this issue.

If indeed those born on the territory are, by retrospective operation of the 1995 Tanzanian law, now to be considered citizens, a number of additional questions arise. Are they dual nationals? To what extent has such dual nationality interfered with their capacity to enjoy Tanzanian citizenship?

#### *Dual Nationality*

First, by operation of current Burundian law all persons with a Burundian father whose nationality was acquired by reason of blood tie automatically acquire Burundian citizenship upon birth.<sup>161</sup> Those who can prove only parentage of a Burundian mother, although entitled to access citizenship, must assert it through a rather elaborate declaration procedure which would seem to require travel to Burundi or, at least, to a Burundian Embassy.<sup>162</sup> Thus from the perspective of Burundian law, some of the refugee group who were born in Tanzania are certainly Burundian nationals; others, in the absence of proactive assertion, are not.

Although dual nationality is not an impediment to retaining Burundian nationality it does complicate the maintenance of Tanzanian citizenship. The 1995 Tanzanian Citizenship Act requires that in order to continue to enjoy Tanzanian citizenship a dual national must renounce the citizenship of the second state before his or her 18<sup>th</sup> birthday (if he or she attains it *after* his or her 18<sup>th</sup> birthday, the stipulated date is a year after acquiring the second nationality). Thus it is possible that even if some of the group did acquire Tanzanian nationality post the passage of the 1995 Act, they may, if they thus became dual nationals, have lost it again by reason of a failure to formally renounce Burundian citizenship.

The Tanzanian Citizenship Act would appear to suggest that loss of Tanzanian nationality occurs simply by default where no active steps are taken by the specified date to renounce the other citizenship. How these provisions operate in practice with respect to this group of isolated refugees – and are governed and tempered by principles of basic administrative law fairness – is unclear. One question that arises is whether in these circumstances where it may be unreasonable to infer knowledge of the law – and knowledge of the requirement to act to preserve one or other of the citizenships. First, there may have been no actual, or

<sup>159</sup> There appear to be only two exceptions to this rule: cases where the individual is a child of diplomats or cases where either parent is "an enemy and the birth occurs in a place then under occupation by the enemy." Tanzanian Citizenship Act No 6 of 1995, section 5(2)(a)-(b).

<sup>160</sup> See, *inter alia*, Keregero Keregero, 2007. "Citizenship Right and Tanzania's Experience." *The Guardian* (Tanzania); and Louise Olivier, "Citizenship Legislation in Southern Africa," Open Society Initiative for Southern Africa, p. 41.

<sup>161</sup> See *Loi 1/013 du 18 juillet 2000 portant reforme du code de la nationalité*. There are additional specific provisions governing citizenship of children whose fathers are unknown, have disowned them or who are adopted by a Burundian parent.

<sup>162</sup> *Loi 1/013 du 18 juillet 2000 portant reforme du code de la nationalité*, art 13-17.

even constructive, knowledge that Tanzanian citizenship was acquired under the Act in 1995 – that in fact there was a benefit that could be lost by inaction. Second, some of the group will have reached the age of 18 years prior to the passage of the 1995 Act. Others will have only attained Burundian citizenship by operation of the law in 2000 – and may not have been aware in exile of the impact of the new law on their status. Minors, whatever their status *vis a vis* Burundian nationality, are not yet subject to the provisions relating to dual citizenship. There are thus a variety of scenarios where the interaction of the two new citizenship regimes may have created diverse categories of refugees with respect to nationality.

The Tanzanian Act does seem to provide for such flexibility: The Director of Immigration Services may, with the consent of the Minister, vary the date or time at which the renunciation of the second nationality must be effected in order to maintain access to Tanzanian citizenship.<sup>163</sup> Considering the complexities of the changes in the citizenship legal regimes of the two States during the long period of exile sustained by this group, and the presumption that it would be difficult for them to have become aware of the new legislation, it may be suitable to make such a special order in this case. That said, the same section also states that nothing in the section shall confer on the Director the power to make any declaration after that person has ceased to be a citizen. The time at which the citizenship is deemed to have lapsed is therefore key, although it is to be inferred that the Minister would have the power to make additional orders, not explicitly contemplated by the Act, varying the date at which the renunciation would take place.

A complicating factor for a sub-group of those born in Tanzania, whatever their situation with regard to Tanzanian citizenship, is the possibility that they are currently *de jure* not Burundian nationals – although it does appear that they are at least considered to be *de facto* nationals in the light of the Burundian government's encouragement of repatriation.

A further issue that may arise in this context is the impact which making any proactive steps to preserve or renounce citizenship by members of the group may have on the integrity of their refugee status under Tanzanian law. Section 3 of the Tanzanian Refugees Act 1995 provides that "A person shall cease to be considered to be a refugee", *inter alia*, if "(a) he has voluntarily re-availed himself of the protection of the country of his nationality; or (b) having lost his nationality he has voluntarily re-acquired it; or (c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality."

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<sup>163</sup> Tanzanian Citizenship Act No 6 of 1995, section 7(8).



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## **About the Centre for the Study of Forced Migration**

The Centre for the Study of Forced Migration (CSFM), established in 1995, is situated at the Faculty of Law, University of Dar es Salaam. The Centre is multidisciplinary in character and draws members from the Faculty of Law, Faculty of Arts and Social Sciences, and the Institute of Development Studies. Among the activities of the Centre are research, teaching, curricula development and preparation of teaching aids and materials on forced migration, service delivery/outreach, and dissemination of humanitarian law. CSFM also plays an advisory role to government and lobbies for appropriate law reform on issues relating to forced migration.

## **About the International Refugee Rights Initiative**

The International Refugee Rights Initiative (IRRI) works to enhance the protection of the rights of those who are forced to flee their homes worldwide. IRRI grounds its research and advocacy in the rights accorded to the displaced in international human rights instruments and strives to make these guarantee effective in the communities where the displaced and their hosts live. Based in New York and Kampala, IRRI acts as a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping local advocates integrate the implications of global policy in their work at home. Currently IRRI has a regional focus on Africa, the continent that hosts more refugees per capita than any other.

## **About the Social Science Research Council**

The Social Science Research Council (SSRC) leads innovation, builds interdisciplinary and international networks, and focuses research on important public issues. Since its inception in 1994, the SSRC Migration Program has had as its primary goal the strengthening of international migration studies. Its field-building strategy has been to recruit young, promising scholars to the field, to connect scholars with shared thematic interests across disciplines, and to link social scientists with other researchers in the humanities, the professions, and the not-for-profit sector. The purpose of the SSRC's Migration Program's "Forced Migration and Human Rights" project was to explore how an international human rights framework could be used in collaborations between scholars and practitioners in international humanitarian and human rights organizations to develop new understandings and program designs that will enhance the protection of forced migrants in Africa.